FEDERAL REGISTER

Vol. 85 Tuesday,
No. 126 June 30, 2020

Pages 39047–39454

OFFICE OF THE FEDERAL REGISTER

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Federal Register

Vol. 85, No. 126

Tuesday, June 30, 2020

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–20–0019; SC20–959–1 FR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the South Texas Onion Committee (Committee) to decrease the assessment rate established for the 2019–20 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective July 30, 2020.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in south Texas. Part 959, (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, south Texas onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable onions for the 2019–20 fiscal year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate from $0.065, the rate that was established for the 2017–18 and subsequent fiscal periods, to $0.05 per 50-pound equivalent of onions handled for the 2019–20 and subsequent fiscal years.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2017–18 and subsequent fiscal periods, the Committee recommended and USDA approved an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

On November 19, 2019, the Committee unanimously recommended 2019–20 expenditures of $174,807 and an assessment rate of $0.05 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $169,807. The assessment rate of $0.05 is $0.015 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to help reduce the Committee's reserve fund and reduce the assessment burden on handlers.

The major expenditures recommended by the Committee for the 2019–20 year include $69,992 for management and administration, $50,000 for compliance, and $20,000 for research. Budgeted expenses for these items in 2018–19 were $69,992, $50,000, and $20,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, expected shipments of 3,960,000 50-pound bags, and the amount of funds available in the authorized reserve. Income derived from handler assessments calculated at $198,000 (3.96 million multiplied by $0.05), along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses of $174,807. Funds in the reserve (currently $201,844) will be kept within the maximum permitted by the Order (approximately two fiscal period's expenses as stated in § 959.43) at the end of the 2019–20 fiscal period.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2019–20 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 60 producers of onions in the production area and approximately 30 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the weighted producer price for South Texas onions during the 2018–19 season was around $9.09 per 50-pound equivalent. The Committee reports total onion shipments were approximately 4.2 million 50-pound equivalents. Using the weighted average price and shipment information, the total 2018–19 crop value is estimated at $38.2 million. Dividing the crop value by the estimated number of producers (60) yields an estimated average receipt per producer of $636,700, so the majority of producers would have annual receipts of less than $1,000,000.

The average handler price for south Texas onions during the 2018–19 season was approximately $11.00 per 50-pound equivalent. Using the price average and shipment information, the total 2018–19 handler crop value is estimated at $46.2 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of $1.54 million, which is below the SBA threshold for small agricultural service firms. Thus, the majority of onion producers and handlers may be classified as small entities.

This final rule decreases the assessment rate collected from handlers for the 2019–20 and subsequent fiscal periods from $0.065 to $0.05 per 50-pound equivalent of Texas onions. The Committee unanimously recommended 2019–20 expenditures of $174,807 and an assessment rate of $0.05 per 50-pound equivalent. The assessment rate of $0.05 is $0.015 lower than the 2017–18 rate. The quantity of assessable onions for the 2019–20 fiscal period is estimated at 3.96 million 50-pound equivalents. Thus, the $0.05 rate should provide $198,000 in assessment income (3.96 million multiplied by $0.05). Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2019–20 year include $69,992 for management and administration, $50,000 for compliance, and $20,000 for research. Budgeted expenses for these items in 2018–19 were $69,992, $50,000, and $20,000, respectively.

The Committee recommended decreasing the assessment rate to reduce the assessment burden on handlers and utilize funds from the authorized reserve to help cover Committee expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee. Alternative expenditure levels were discussed by this group, based upon the relative value of various activities to the South Texas onion industry. Based on the estimated shipments, the recommended assessment rate of $0.05 would provide $198,000 in assessment income. The Committee determined that assessment revenue, along with interest income and funds from authorized reserves would be adequate to cover budgeted expenses for the 2019–20 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average producer price for the 2019–20 season should be approximately $10.15 per 50-pound equivalent of Texas onions. Therefore, the estimated assessment revenue for the 2019–20 fiscal period as a percentage of total producer revenue would be about 0.49 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Committee's meeting was widely publicized throughout the South Texas onion industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 19, 2019, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on March 19, 2020 (85 FR 15743). Copies of the proposed rule were also mailed or sent via email to all South Texas onion handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 20, 2020, was provided for interested persons to respond to the proposal.

Four comments were received. One was in support, one considered both maintaining the current assessment rate and lowering the assessment rate, and two comments did not address the merits of the proposal.

One comment received in support of the regulation stated the assessment rate should be decreased given the state of the national economy. The comment received that addressed both maintaining and reducing the assessment rate expressed that the proposed action would not be a significant benefit to producers. The commenter also recognized the indirect burden of assessments on producers and stated that maybe the assessment rate should be lowered. The Committee recommended the decrease in the assessment rate to help reduce the assessment burden on handlers. This change reduces the assessment burden on the industry handlers by around $60,000, a reduction in total assessments of nearly 23 percent. The decreased assessment rate still covers the budgeted expenses for the Committee and reduces the assessment burden for handlers. It may also reduce the burden on producers.

Accordingly, no changes will be made to the rule as proposed, based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses*. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the FOR FURTHER INFORMATION CONTACT section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2019, an assessment rate of $0.05 per 50-pound equivalent is established for South Texas onions.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–12879 Filed 6–29–20; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2019–0202]

RIN 3150–AK39

List of Approved Spent Fuel Storage Casks: TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System, Certificate of Compliance No. 1004, Renewed Amendment No. 16

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its spent fuel storage regulations by revising the TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 16 to Certificate of Compliance No. 1004. This amendment used a qualitative risk-informed approach (graded approach criteria) to streamline the format and content of the certificate of compliance. Renewed Amendment No. 16 does not include any design or fabrication changes to the Standardized NUHOMS® System.

DATES: This direct final rule is effective September 14, 2020, unless significant adverse comments are received by July 30, 2020. If this direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0202. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Norma García Santos, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6999; email: *Norma.GarciaSantos@nrc.gov* or Torre Taylor, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–7900; email: *Torre.Taylor@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0202 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0202.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2019–0202 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, 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 the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

This rule is limited to the changes contained in Renewed Amendment No. 16 to Certificate of Compliance No. 1004 and does not include other aspects of the Standardized NUHOMS® System design. The NRC is using the direct final rule procedure to issue this amendment because it represents a limited and routine change to an existing certificate of compliance that is expected to be non-controversial. The NRC has determined that, with the changes, reasonable assurance for adequate protection of public health and safety will continue to be ensured. The amendment to the rule will become effective on September 14, 2020. However, if the NRC receives significant adverse comments on this direct final rule by July 30, 2020, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule, certificate of compliance, or technical specifications.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65898), that approved the Standardized NUHOMS® System design and added it to the list of NRC-approved cask designs provided in § 72.214 as Certificate of Compliance No. 1004.

By application dated August 24, 2015, as supplemented on February 9, 2016, TN Americas LLC submitted a request to the NRC, in accordance with § 72.244, to renew and revise Certificate of Compliance No. 1004. On December 4, 2017, the NRC issued the renewals of the initial certificate; Amendment Nos. 1 through 11 and 13, Revision 1; and Amendment No. 14 of Certificate of Compliance No. 1004 for the Standardized NUHOMS® System. Subsequently, Renewed Amendment No. 15 was issued on December 14, 2018. The certificates were renewed for an additional 40-year period. This certificate, its amendments, and all future amendments to the certificate are referred to as Renewed Amendments.

IV. Discussion of Changes

On June 29, 2017, TN Americas LLC submitted a request to the NRC to amend Certificate of Compliance No. 1004. TN Americas LLC supplemented its request on the following dates: August 31, 2017; October 13, 2017; November 16, 2017; April 26, 2018; June 7, 2018; September 3, 2019; September 6, 2019; September 10, 2019; and September 11, 2019. Because this amendment is subsequent to TN Americas LLC's Standardized NUHOMS® System, Certificate of Compliance No. 1004 renewal, it is subject to the Aging Management Program requirements of the renewed certificate of compliance; therefore, it is referred to as ''Renewed Amendment No. 16.'' Renewed Amendment No. 16 contains no design or fabrication changes to the Standardized NUHOMS® System; rather, the applicant requested changes to the format and content of the certificate.

This amendment application was used as a pilot project to apply a qualitative risk-informed approach (using the ''graded approach criteria'') that could be used to streamline the format and content of certificates of compliance. In 2016 and 2017, the NRC coordinated with external stakeholders through a series of public workshops to explore options for achieving efficiencies through changes to the format and content of certificates of compliance. The information obtained from those workshops supported development of risk-informed, graded approach criteria that could be used to streamline the format and content of a certificate of compliance for a spent fuel storage system. The graded approach criteria help determine the level of detail and location of information that should be included in a certificate of compliance for a spent fuel dry storage cask design.

The NRC prepared a preliminary safety evaluation report that documents its review of TN Americas LLC's amendment request for Renewed Amendment No. 16. Chapter 2 of the preliminary safety evaluation report for this amendment discusses the development of the graded approach criteria in more detail, including information on the public meetings that were held and how the criteria were applied in review of this amendment request. The graded approach is further described in Regulatory Issue Resolution Protocol I–16–01. The NRC recently endorsed the graded approach criteria by letter to the Nuclear Energy Institute, dated January 8, 2020.

The preliminary safety evaluation report additionally documents that the proposed changes to Certificate of Compliance No. 1004 continue to provide reasonable assurance of adequate protection to public health and safety. The preliminary safety evaluation report also concludes that the proposed changes were included in the appropriate section of the certificate of compliance, its appendices, and/or the updated final safety analysis report; and that the proposed changes did not include any design or fabrication changes.

In reaching this determination, the NRC reviewed the applicant's use of the graded approach criteria that are described in detail in Chapter 2 of the preliminary safety evaluation report. In general, the criteria were used to evaluate whether the changes proposed to the format and content of Certificate of Compliance No. 1004 were appropriate. The staff reviewed the applicant's use of the graded approach criteria to ensure that the certificate included information that was important to safety and that no information was removed if the information met one of the risk criteria. The changes to Certificate of Compliance No. 1004 and its appendices are identified with revision bars in the margin of each licensing document.

As documented in the preliminary safety evaluation report, there are no changes to cask design requirements in the proposed amendment. The design of the cask would prevent loss of containment, shielding, and criticality control in the event of each evaluated accident condition. This amendment does not reflect a change in design or fabrication of the cask. In addition, because there are no design or fabrication changes, there are no resulting changes in occupational exposure or offsite dose rates from the implementation of Renewed Amendment No. 16; therefore, exposure and dose rate limits would remain well within the limits specified by 10 CFR part 20, ''Standards for Protection Against Radiation.'' With no design or fabrication changes, there will be no significant change in the types or amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

The NRC staff determined that the amended Standardized NUHOMS® System design, when used under the conditions specified in the certificate of compliance, the technical specifications, and the NRC's regulations, will meet the requirements of 10 CFR part 72; therefore, adequate protection of public health and safety will continue to be reasonably assured. When this direct final rule becomes effective, persons who hold a general license under § 72.210 may, consistent with the license conditions under § 72.212, load spent nuclear fuel into TN Americas LLC Standardized NUHOMS® System casks that meet the criteria of Renewed Amendment No. 16 to Certificate of Compliance No. 1004.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC revises the TN Americas LLC Standardized NUHOMS® System design listed in § 72.214, ''List of approved spent fuel storage casks.'' This action does not constitute the establishment of a standard that contains generally applicable requirements.

VI. Agreement State Compatibility

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017 and published in the **Federal Register** on October 18, 2017 (82 FR 48535), this rule is classified as Compatibility Category NRC—Areas of Exclusive NRC Regulatory Authority. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended, or the provisions of 10 CFR chapter I. Therefore, compatibility is not required for program elements in this category. Although an Agreement State may not adopt program elements reserved to the NRC, and the Category ''NRC'' does not confer regulatory authority on the State, the State may wish to inform its licensees of certain requirements by means consistent with the particular State's administrative procedure laws.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VIII. Environmental Assessment and Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has made a finding of no significant impact on the basis of this environmental assessment.

A. The Action

The action is to amend § 72.214 to revise the Standardized NUHOMS® System listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 16 to Certificate of Compliance No. 1004. This amendment revises the certificate of compliance using the graded approach criteria to change the format and content of the certificate of compliance. No technical changes were made to the certificate of compliance as part of this amendment.

B. The Need for the Action

This direct final rule amends the certificate of compliance for the Standardized NUHOMS® System design within the list of approved spent fuel storage casks to allow power reactor licensees to store spent fuel at reactor sites under a general license. Specifically, this amendment revises the certificate of compliance to enable the use of the graded approach criteria to change the format and content of the certificate of compliance to (1) include only the information that is needed for safety, (2) move information to the appendices or the final safety analysis report such as consolidating similar programmatic or technical information in a centralized location which facilities the use of the certificate, (3) remove requirements already in 10 CFR part 72, and (4) remove duplicative information in the certificate of compliance, the appendices, or the updated final safety analysis report.

C. Environmental Impacts of the Action

On July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the environmental assessment for the 1990 final rule. The environmental assessment for this Renewed Amendment No. 16 tiers off of the environmental assessment for the July 18, 1990, final rule. Tiering on past environmental assessments is a standard process under the National Environmental Policy Act of 1969, as amended.

The Standardized NUHOMS® Systems are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an independent spent fuel storage installation, the type of facility at which a holder of a power reactor operating license would store spent fuel in casks in accordance with 10 CFR part 72, can include tornado winds and tornado-generated missiles, a design basis earthquake, a design basis flood, an accidental cask drop, lightning effects, fire, explosions, and other types of incidents.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of confinement, shielding, and criticality control in the event of an accident. If there is no loss of confinement, shielding, or criticality control, the environmental impacts resulting from an accident would be insignificant. This amendment does not reflect changes in the design or fabrication of the storage system. Because there are no design or process changes, any resulting occupational exposure or offsite dose rates from the implementation of Renewed Amendment No. 16 would remain well within the 10 CFR part 20 limits. Therefore, the proposed changes will not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the July 18, 1990, final rule. There will be no significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. The NRC documented its safety findings in the preliminary safety evaluation report.

D. Alternative to the Action

The alternative to this action is to deny approval of Renewed Amendment No. 16 and not issue the direct final rule. Consequently, any 10 CFR part 72 general licensee that seeks to load spent nuclear fuel into the TN Americas LLC Standardized NUHOMS® System in accordance with the changes described in proposed Renewed Amendment No. 16 would have to request an exemption from the requirements of §§ 72.212 and 72.214 for some of the risk-informed changes proposed. Under this alternative, interested licensees would have to prepare, and the NRC would have to review, a separate exemption request for some of these changes, thereby increasing the administrative burden upon the NRC and the costs to each licensee. The environmental impacts would be the same as the proposed action.

E. Alternative Use of Resources

Approval of Renewed Amendment No. 16 to Certificate of Compliance No. 1004 would result in no irreversible commitment of resources.

F. Agencies and Persons Contacted

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

G. Finding of No Significant Impact

The environmental impacts of the action have been reviewed under the requirements in National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the foregoing environmental assessment, the NRC concludes that this direct final rule entitled ''List of Approved Spent Fuel Storage Casks: TN Americas LLC, Standardized NUHOMS® Horizontal Modular System, Certificate of Compliance No. 1004, Renewed Amendment No. 16'' will not have a significant effect on the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this direct final rule.

IX. Paperwork Reduction Act Statement

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this direct final rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only nuclear power plant licensees and TN Americas LLC. These entities do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XI. Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if: (1) It notifies the NRC in advance; (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance; and (3) the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65898), the NRC issued an amendment to 10 CFR part 72 that approved the Standardized NUHOMS® System design by adding it to the list of NRC-approved cask designs in § 72.214.

On June 29, 2017, as supplemented on August 31, 2017, October 13, 2017, November 16, 2017, April 26, 2018, June 7, 2018, September 3, 2019, September 6, 2019, September 10, 2019, and September 11, 2019, TN Americas LLC submitted a request to amend the Standardized NUHOMS® System as described in Section IV, ''Discussion of Changes,'' of this document.

The alternative to this action is to not approve the amendment, as discussed in Section VIII.D. of this document. If Renewed Amendment No. 16 is not approved, users of this design would not be able to process some changes under the provisions of § 72.48, thereby decreasing efficiency and increasing costs in the long term. To implement some of the format and content changes, users of the design would have to request an exemption from some of the requirements of §§ 72.212 and 72.214. Under this alternative, each interested 10 CFR part 72 licensee would have to prepare, and NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of this direct final rule is consistent with previous NRC actions. Further, as documented in the preliminary safety evaluation report and environmental assessment, this direct final rule will have no adverse effect on public health and safety or the environment. This direct final rule has no significant identifiable impact or benefit on other government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of this direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and therefore, this action is recommended.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§ 72.62) does not apply to this direct final rule. Therefore, a backfit analysis is not required. This direct final rule revises Certificate of Compliance No. 1004 for the TN Americas LLC Standardized NUHOMS® System, as currently listed in § 72.214. The amendment consists of the changes in Renewed Amendment No. 16 previously described, as set forth in the revised certificate of compliance and technical specifications.

Renewed Amendment No. 16 to Certificate of Compliance No. 1004 for the Standardized NUHOMS® System was initiated by TN Americas LLC and was not submitted in response to new NRC requirements, or an NRC request for amendment. Renewed Amendment No. 16 applies only to new casks fabricated and used under Renewed Amendment No. 16. These changes do not affect existing users of the Standardized NUHOMS® System, and previous amendments continue to be effective for existing users. While current certificate of compliance users may comply with Renewed Amendment No. 16, this would be a voluntary decision on the part of current users.

For these reasons, Renewed Amendment No. 16 to Certificate of Compliance No. 1004 does not constitute backfitting under § 72.62 or § 50.109(a)(1), or otherwise represent an inconsistency with the issue finality provisions applicable to combined licenses in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis for this rulemaking.

XIII. Congressional Review Act

This direct final rule is not a rule as defined in the Congressional Review Act.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No., (ADAMS package accession No.), or **Federal Register** citation
Areva Inc.'s (former name of TN Americas LLC) Request to Make Changes to Certificate of Compliance 1004, Amendments 0–11 and 13; dated August 24, 2015.	(ML15239A718).
Letter from P. Triska, Areva, to the NRC; Response to Request for Additional Information; dated February 9, 2016.	(ML16054A214).
Letter from P. Triska, Areva, to the NRC; Response to Request for Additional Information; dated February 9, 2016.	(ML16054A226).
Letter from R. McCullum/NEI to M. Layton/NMSS/DSFM re: Regulatory Issue Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP–I–16–01); dated, May 12, 2017.	ML17138A119.
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; letter dated June 29, 2017.	(ML17191A227).
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated August 31, 2017.	(ML17249A001).
TN Americas LLC; Certificate of Compliance No. 1004, Renewed Amendment No. 14; letter dated September 27, 2017.	82 FR 44879.
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated October 13, 2017.	(ML17304A278).

Document	ADAMS accession No., (ADAMS package accession No.), or **Federal Register** citation
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated November 16, 2017.	(ML17325A408).
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated April 26, 2018.	(ML18124A195).
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated June 7, 2018.	ML18162A093.
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated September 3, 2019.	(ML19255E934).
Email from D. Shaw (TN Americas LLC) to N. Garcia Santos (NRC) RE: Certificate of Compliance No. 1004, Amendment 16 (NUHOMS®)—NRC Clarification of Terminology in Certificate of Compliance; Dated September 6, 2019.	ML19252A394.
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004, Form 74—Correction to Appendix A of the Certificate of Compliance; dated September 10, 2019.	(ML19253C390).
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004, Form 29—Correction to Appendix A and B of the Certificate of Compliance; dated September 11, 2019.	(ML19254C951).
TN Americas LLC Amendment No. 16 to Certificate of Compliance No. 1004	ML19262E160.
Technical Specifications for TN Americas LLC Amendment No. 16 to Certificate of Compliance No. 1004	ML19262E154, ML19262E156, and ML19262E158.
Preliminary Safety Evaluation Report for TN Americas LLC Amendment No. 16 to Certificate of Compliance No. 1004.	ML19262E161.
Letter from A. Kock, NMSS/DFM, to R. McCullum, NEI, Endorsement of Graded Approach Criteria; dated January 8, 2020.	(ML19353D337).

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2019–0202. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder NRC–2019–0202; (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72:

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

■ 2. In § 72.214, Certificate of Compliance No. 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995, superseded by Initial Certificate, Revision 1, on April 25, 2017, superseded by Renewed Initial Certificate, Revision 1, on December 11, 2017.

Renewed Initial Certificate, Revision 1, Effective Date: December 11, 2017.

Amendment Number 1 Effective Date: April 27, 2000, superseded by Amendment Number 1, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 1, Revision 1, on December 11, 2017.

Renewed Amendment Number 1, Revision 1, Effective Date: December 11, 2017.

Amendment Number 2 Effective Date: September 5, 2000, superseded by Amendment Number 2, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 2, Revision 1, on December 11, 2017.

Renewed Amendment Number 2, Revision 1, Effective Date: December 11, 2017.

Amendment Number 3 Effective Date: September 12, 2001, superseded by Amendment Number 3, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 3, Revision 1, on December 11, 2017.

Renewed Amendment Number 3, Revision 1, Effective Date: December 11, 2017.

Amendment Number 4 Effective Date: February 12, 2002, superseded by Amendment Number 4, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 4, Revision 1, on December 11, 2017.

Renewed Amendment Number 4, Revision 1, Effective Date: December 11, 2017.

Amendment Number 5 Effective Date: January 7, 2004, superseded by Amendment Number 5, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 5, Revision 1, on December 11, 2017.

Renewed Amendment Number 5, Revision 1, Effective Date: December 11, 2017.

Amendment Number 6 Effective Date: December 22, 2003, superseded by Amendment Number 6, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 6, Revision 1, on December 11, 2017.

Renewed Amendment Number 6, Revision 1, Effective Date: December 11, 2017.

Amendment Number 7 Effective Date: March 2, 2004, superseded by Amendment Number 7, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 7, Revision 1, on December 11, 2017.

Renewed Amendment Number 7, Revision 1, Effective Date: December 11, 2017.

Amendment Number 8 Effective Date: December 5, 2005, superseded by Amendment Number 8, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 8, Revision 1, on December 11, 2017.

Renewed Amendment Number 8, Revision 1, Effective Date: December 11, 2017.

Amendment Number 9 Effective Date: April 17, 2007, superseded by Amendment Number 9, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 9, Revision 1, on December 11, 2017.

Renewed Amendment Number 9, Revision 1, Effective Date: December 11, 2017.

Amendment Number 10 Effective Date: August 24, 2009, superseded by Amendment Number 10, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 10, Revision 1, on December 11, 2017.

Renewed Amendment Number 10, Revision 1, Effective Date: December 11, 2017.

Amendment Number 11 Effective Date: January 7, 2014, superseded by Amendment Number 11, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 11, Revision 1, on December 11, 2017.

Renewed Amendment Number 11, Revision 1, Effective Date: December 11, 2017, as corrected (ADAMS Accession No. ML18018A043).

Amendment Number 12 Effective Date: Amendment not issued by the NRC.

Amendment Number 13 Effective Date: May 24, 2014, superseded by Amendment Number 13, Revision 1, on April 25, 2017, superseded by Renewed Amendment Number 13, Revision 1, on December 11, 2017.

Renewed Amendment Number 13, Revision 1, Effective Date: December 11, 2017, as corrected (ADAMS Accession No. ML18018A100).

Amendment Number 14 Effective Date: April 25, 2017, superseded by Renewed Amendment Number 14, on December 11, 2017.

Renewed Amendment Number 14 Effective Date: December 11, 2017.

Renewed Amendment Number 15 Effective Date: January 22, 2019.

Renewed Amendment Number 16 Effective Date: September 14, 2020.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Renewed Certificate Expiration Date: January 23, 2055.

Model Number: NUHOMS®–24P, –24PHB, –24PTH, –32PT, –32PTH1, –37PTH, –52B, –61BT, –61BTH, and –69BTH.

* * * * *

Dated June 15, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,

Executive Director for Operations.

[FR Doc. 2020–13730 Filed 6–29–20; 8:45 am]

BILLING CODE 7590–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1024

[Docket No. CFPB–2020–0022]

Treatment of Certain COVID–19 Related Loss Mitigation Options Under the Real Estate Settlement Procedures Act (RESPA) (Regulation X)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this interim final rule to amend Regulation X. The amendments temporarily permit mortgage servicers to offer certain loss mitigation options based on the evaluation of an incomplete loss mitigation application. Eligible loss mitigation options, among other things, must permit borrowers to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by the Federal Housing Administration (FHA), the mortgage insurance terminates. These amounts include, without limitation, all principal and interest payments forborne through payment forbearance programs made available to borrowers experiencing financial hardships due, directly or indirectly, to the COVID–19 emergency, including a payment forbearance program offered pursuant to section 4022 of the Coronavirus Aid, Relief, and Economic Security Act. These amounts also include principal and interest payments that are due and unpaid by borrowers experiencing financial hardships due, directly or indirectly, to the COVID–19 emergency.

DATES: This interim final rule is effective on July 1, 2020. Comments must be received on or before August 14, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0022, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-IFR-MortgageServicing@cfpb.gov.* Include Docket No. CFPB–2020–0022 in the subject line of the message.
- *Hand Delivery/Mail/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joel Singerman, Counsel, or Terry J. Randall, Senior Counsel, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Interim Final Rule

Title 12 CFR part 1024 (Regulation X) generally requires servicers to obtain a complete loss-mitigation application before evaluating a mortgage borrower for a loss-mitigation option, such as a loan modification or short sale.[1] Regulation X provides an exception from this requirement for certain short-term loss mitigation options.[2] Due to the particular needs of mortgage servicers and borrowers during the novel coronavirus disease (COVID–19) pandemic emergency (COVID–19 emergency), the Bureau is amending Regulation X to temporarily permit mortgage servicers to offer certain loss mitigation options without obtaining a complete loss mitigation application. Servicers may offer eligible loss mitigation options to a borrower who has received a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, including one offered pursuant to section 4022 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),[3] or who has had other principal and interest payments that are due and unpaid as a result of a financial hardship due, directly or indirectly, to the COVID–19 emergency.

The amendment conditions eligibility for the new exception on the loss mitigation option satisfying three criteria. First, the loss mitigation option must permit the borrower to delay paying certain amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by FHA, the mortgage insurance terminates. These amounts include, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, including one made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056). These amounts also include, without limitation all other principal and interest payments that are due and unpaid by a borrower experiencing financial hardship due, directly or indirectly, to the COVID–19 emergency. For purposes of this criterion, the term of the mortgage loan means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option. Second, any amounts that the borrower may delay paying through the loss mitigation option do not accrue interest; the servicer does not charge any fee in connection with the loss mitigation option; and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option. Third, the borrower's acceptance of the loss mitigation offer must resolve any prior delinquency. These criteria maintain important protections for borrowers and are intended to align with the COVID–19 payment deferral option announced by the Federal Housing Finance Agency (FHFA), discussed in part II, and other similar programs.

The interim final rule also excludes servicers from certain regulatory requirements if a borrower accepts an option offered pursuant to the new exception. Specifically, the interim final rule provides that the servicer is not required to continue the reasonable diligence efforts § 1024.41(b)(1) otherwise requires or send the acknowledgement notice § 1024.41(b)(2) otherwise requires.

II. Background

A. The Bureau's Regulation X Mortgage Servicing Rules

In February 2013, the Bureau issued the Mortgage Servicing Rules to implement the Real Estate Settlement Procedures Act of 1974,[4] and included these rules in Regulation X.[5] The Bureau later clarified and revised Regulation X's servicing rules through several additional notice-and-comment rulemakings.[6] In part, these rulemakings were intended to address deficiencies in servicers' handling of delinquent borrowers and loss mitigation applications during and after the 2008 financial crisis.[7] When the housing crisis began, servicers were faced with historically high numbers of delinquent mortgages, loan modification requests, and in-process foreclosures in their portfolios.[8] Many servicers lacked the infrastructure, trained staff, controls, and procedures needed to manage effectively the flood of delinquent mortgages they were obligated to handle.[9] Inadequate staffing and

[1] Section 1024.41(b)(1) (requiring servicer to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application); § 1024.41(c)(1)(i) (requiring evaluation of borrower for all loss mitigation options available to the borrower if the servicer receives a complete loss mitigation application more than 37 days before a scheduled foreclosure sale); and § 1024.41(c)(2)(i) (prohibiting servicer from offering a loss mitigation option based on an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application). Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to these requirements. 12 CFR 1024.30(b)(1).

[2] 12 CFR 1024.41(c)(2)(iii).

[3] Public Law 116–136, 134 Stat. 281 (2020).

[4] Public Law 93–533, 88 Stat. 1724 (12 U.S.C. 2601 *et seq.*).

[5] 78 FR 10695 (Feb. 14, 2013). In January 2013, the Bureau also issued separate ''Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)'' (2013 TILA Servicing Final Rule). *See* 78 FR 10902 (Feb. 14, 2013). The Bureau conducted an assessment of this rule in 2018–19 and released a report detailing its findings in early 2019. 2013 RESPA Servicing Rule Assessment Report, *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.*

[6] Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 44686 (July 24, 2013); Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z), 78 FR 60382 (Oct. 1, 2013); Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 62993 (Oct. 23, 2013); Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 72160 (Oct. 19, 2016); Amendments to the 2013 Mortgage Rules Under RESPA (Regulation X) and TILA (Regulation Z), 82 FR 30947 (July 5, 2017); Mortgage Servicing Rules Under RESPA (Regulation X), 82 FR 47953 (Oct. 16, 2017). The Bureau also issued notices providing guidance on the Rule and soliciting comment on the Rule. *See, e.g.,* Applicability of Regulation Z's Ability-to-Repay Rule to Certain Situations Involving Successors-in-interest, 79 FR 41631 (July 17, 2014); Safe Harbors from Liability Under the Fair Debt Collections Practices Act for Certain Actions in Compliance with Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 81 FR 71977 (Oct. 19, 2016); Policy Guidance on Supervisory and Enforcement Priorities Regarding Early Compliance With the 2016 Amendments to the 2013 Mortgage Servicing Rules Under RESPA (Regulation X) and TILA (Regulation Z), 82 FR 29713 (June 30, 2017).

[7] *See generally* 78 FR 10699–701.

[8] *See* discussion in Chapter 3 of the 2013 RESPA Servicing Rule Assessment Report. 2013 RESPA Servicing Rule Assessment Report, *https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rule-assessment_report.pdf.*

[9] Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X), 78 FR 10696, 10700 (Feb. 14, 2013).

procedures led to a range of reported problems with servicing of delinquent loans, including some servicers misleading borrowers, failing to communicate with borrowers, losing or mishandling borrower-provided documents supporting loan modification requests, and generally providing inadequate service to delinquent borrowers.[10]

The Bureau's mortgage servicing rules addressed these concerns by establishing procedures that mortgage servicers generally must follow in evaluating loss mitigation applications submitted by mortgage borrowers.[11] Among other things, as relevant here, Regulation X generally requires servicers to obtain a complete loss-mitigation application from a borrower before offering the borrower a loss-mitigation option, such as a loan modification or short sale.[12] Servicers generally may not offer a loss-mitigation option based upon an evaluation of any information provided in connection with an incomplete application.[13] The loss mitigation provisions were motivated in part by concerns that some servicers were doing an inadequate job of communicating with borrowers regarding loss mitigation options,[14] and that some servicers were unwilling to work with borrowers to reach agreement on loss mitigation options.[15] The Bureau intended this restriction to help ensure that borrowers have a full and fair opportunity to be evaluated for loss mitigation options.[16]

However, in issuing these requirements, the Bureau recognized that more flexible requirements may be warranted when borrowers are facing certain hardships. For example, Regulation X provides flexibility for servicers when they offer short-term payment forbearance programs or short-term repayment plans, as defined in Regulation X, based upon an evaluation of an incomplete application.[17] In granting this flexibility, the Bureau explained that borrowers facing only temporary hardships might benefit from a more efficient application process that leads to a temporary solution without exhausting the protections under § 1024.41 that are determined as of the date a complete application is received.[18]

B. The CARES Act and COVID–19 Forbearances

By late March 2020, the COVID–19 emergency was significantly affecting the economy. Between March 15 and May 15, 2020, over 35 million people filed initial jobless claims, and the unemployment rate climbed to over 14 percent in April—the highest monthly level since 1948 when the Bureau of Labor and Statistics started tracking this series.[19]

On March 27, 2020, the CARES Act was enacted. Among other things, the CARES Act ensures that borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency and who have ''Federally backed mortgage loans'' [20] have access to payment forbearance programs (CARES Act forbearance) if they submit a request to their mortgage servicer and affirm that they are experiencing a financial hardship during the COVID–19 emergency.[21] By requiring servicers to grant CARES Act forbearances to certain borrowers with federally backed mortgages (which account for approximately 80 percent of mortgage borrowers), the CARES Act established payment forbearance as the primary tool that servicers of these loans would use initially to assist struggling borrowers during the COVID–19 emergency. The Bureau understands that servicers of other mortgages that are not ''Federally backed mortgage loans'' under the CARES Act may be offering similar payment forbearance programs to their borrowers.[22]

On April 3, 2020, the Bureau, the Board of Governors of the Federal Reserve System (the Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the State Banking Regulators issued a joint statement (Joint Statement) recognizing the serious impact the COVID–19 emergency was having on consumers and on the operations of mortgage servicers.[23] The Joint

[10] *See* U.S. Gov't Accountability Off., GAO–10–634, *Troubled Asset Relief Program: Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Actions,* at 14–16 (2010), *https://www.gao.gov/assets/310/305891.pdf;* Hearing on Problems in Mortgage Servicing from Modification to Foreclosure Before the S. Comm. on Banking, Housing, and Urban Affairs, 111th Cong. 54 (2010) (statement of Thomas J. Miller, Att'y Gen. State of Iowa).

[11] *See generally* 12 CFR 1024.41. Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are generally exempt from these requirements. 12 CFR 1024.30(b)(1).

[12] 12 CFR 1024.41(b)(1) (requiring servicer to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application); § 1024.41(c)(1)(i) (requiring evaluation of borrower for all loss mitigation options available to the borrower if the servicer receives a complete loss mitigation application more than 37 days before a scheduled foreclosure sale); and § 1024.41(c)(2)(i) (prohibiting servicer from offering a loss mitigation option based on an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application). Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to these requirements. 12 CFR 1024.30(b)(1).

[13] 12 CFR 1024.41(c)(2)(i).

[14] 78 FR at 10807.

[15] *Id.* at 10814.

[16] *Id.* at 10815.

[17] 12 CFR 1024.41(c)(2)(iii); *see also* comments 41(c)(2)(iii)–1 and –4 (defining short-term payment forbearance program and short-term repayment plan for purposes of the regulation).

[18] 78 FR at 60400; 81 FR at 72246. Section 1024.41(i) limits the circumstances when a servicer must comply with the procedures described in § 1024.41. Servicers do not need to comply with the procedures described in § 1024.41 if the servicer has previously complied with the requirements of § 1024.41 for a complete loss mitigation application submitted by the borrower and the borrower has been delinquent at all times since submitting the prior complete application. Because a servicer who offers a borrower a short-term option based on evaluation of an incomplete application pursuant to § 1024.41(c)(2)(iii) has not evaluated a complete application submitted by the borrower, a servicer would have to comply with the procedures described in § 1024.41 if the borrower submits a complete application after the servicer offers the borrower a short-term payment forbearance program.

[19] U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, https://www.bls.gov/ces* (last visited June 6, 2020).

[20] The CARES Act defines a ''Federally backed mortgage loan'' as any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one-to-four families that is insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 *et seq.*); insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20); guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a, 1715z–13b); guaranteed or insured by the Department of Veterans Affairs; guaranteed or insured by the Department of Agriculture; made by the Department of Agriculture; or purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. CARES Act section 4022(a)(2).

[21] CARES Act section 4022(b). Upon receiving the borrower's request for forbearance, the servicer must provide a forbearance for up to 180 days with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency and with no fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance. The servicer must extend the forbearance for up to an additional 180 days at the request of the borrower, provided that the request for an extension is made during the covered period. Note that the borrower may request that either the initial or extended forbearance period be less than 180 days. *See* CARES Act section 4022(b) and (c)(1).

[22] Such programs may be based on servicers' own programs or policy initiative or may be required by State or local laws.

[23] Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID–19 Emergency and the CARES Act (Apr. 3, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_mortgage-servicing-rules-covid-19.pdf.* On the same day, the Bureau issued additional compliance guidance to provide mortgage servicers with enhanced clarity about existing flexibility in the Bureau's mortgage

Continued

Statement informed servicers of the agencies' flexible supervisory and enforcement approach during the emergency regarding certain consumer communications required by Regulation X, and provided guidance on servicers' compliance with Regulation X when offering CARES Act forbearances and other payment forbearance programs during the COVID–19 emergency.[24] The Joint Statement explained that, when a borrower requests a CARES Act forbearance and affirms that the borrower is experiencing a financial hardship during the COVID-emergency, it constitutes an incomplete loss mitigation application for purposes of Regulation X.[25] Although receipt of an incomplete application generally triggers a servicer's obligations under § 1024.41, the Joint Statement also provided that a CARES Act forbearance qualifies as a short-term payment forbearance program [26] under Regulation X, so certain loss mitigation requirements under Regulation X do not apply.[27]

By early June 2020, as a result of the CARES Act and other similar forbearance programs made available by owners or investors of mortgage loans, as many as 4.3 million mortgage borrowers (or 8.55 percent of mortgage borrowers) nationwide were in forbearance programs.[28] After reaching a historic low in January of 2020 (just above 3 percent), the mortgage delinquency rate (which includes loans in forbearance) had more than doubled by early June and was at its highest level since 2013. The delinquency rate was 3.1 percentage points higher in April than in March—a monthly increase three times the previous record set in November of 2008 during the great recession.[29]

C. COVID–19 Emergency: Post-Forbearance Options and Post-Delinquency Options

The CARES Act does not specify how borrowers receiving CARES Act forbearances must repay the forborne payments. While there are good reasons for this, it creates uncertainty for stakeholders as to how borrowers must repay these amounts when CARES Act forbearances expire. As many initial forbearance periods were set at 90 days, many of them will expire in June or July 2020.

The Federal National Mortgage Association (Fannie Mae), Federal Home Loan Mortgage Company (Freddie Mac), FHA, and other owners or insurers of mortgage loans have announced programs to assist borrowers in repayment of the forborne amounts.[30] On May 13, 2020, FHFA announced that Fannie Mae and Freddie Mac would make a payment deferral program available to borrowers in a COVID–19 forbearance plan (FHFA COVID–19 payment deferral) and to borrowers who have experienced a financial hardship resulting from COVID–19 that has affected their ability to make their full monthly payment.[31] FHFA indicated that these programs will be available to borrowers who are able to return to making their normal monthly mortgage payment.[32] According to FHFA, these programs take the missed mortgage payments and make them a payment due at the sale of the home, refinancing of the mortgage loan, or the end of the loan.[33] Fannie Mae and Freddie Mac have established streamlined application procedures for these programs that permit servicers to offer an FHFA COVID–19 payment deferral without collecting Fannie Mae's and Freddie Mac's "complete Borrower Response Package." [34] Rather, Fannie Mae and Freddie Mac permit servicers to offer FHFA COVID–19 payment deferrals to any borrowers who meet certain criteria if the borrower indicates to the servicer that (1) the borrower can afford to resume their normal monthly payments due before the forbearance and (2) the borrower cannot afford full reinstatement or a repayment plan to bring their mortgage loan current when they exit forbearance.[35] Fannie Mae and Freddie Mac prohibit servicers from charging borrowers who accept an FHFA COVID–19 payment deferral administrative fees, and direct servicers to waive all late charges, penalties, stop payment fees, or similar charges upon completing a COVID–19 payment deferral.[36] This program takes effect on July 1, 2020.[37] Other mortgage investors and insurers have also announced similar loss mitigation options.[38]

After FHFA announced these deferral programs, industry stakeholders and consumer advocates raised concerns about whether servicers could offer an FHFA COVID–19 payment deferral using the streamlined application procedures described above without violating Regulation X's general prohibition of offering a loss mitigation option based on an evaluation of an incomplete application.[39] The Bureau has evaluated the interaction between the FHFA payment deferral procedures and Regulation X, and engaged in informal outreach with FHFA, mortgage servicers, trade associations, consumer advocacy groups, and others. Industry stakeholders and consumer advocates urged the Bureau to take steps to ensure that servicers would not be in violation of Regulation X if they were to use the streamlined procedures.

The Bureau supports the goal of the FHFA's COVID–19 payment deferral program and certain other similar programs designed to assist borrowers experiencing financial hardships due, directly or indirectly, to the COVID–19 emergency. Through these programs, eligible borrowers can eliminate the immediate potential risk of losing their homes, resume repaying the mortgage loan with no delinquency and no additional fees or interest, and better plan how eventually to repay the

servicing rules that they may use to help consumers during the COVID–19 emergency. Bureau of Consumer Fin. Prot., *Bureau's Mortgage Servicing Rules FAQs related to the COVID–19 Emergency, https://files.consumerfinance.gov/f/documents/cfpb_mortgage-servicing-rules-covid-19_faqs.pdf.*

[24] Joint Statement, *supra* note 23.

[25] *Id.* The Joint Statement also explained that servicers may provide multiple sequential short-term payment forbearance programs under the Regulation X mortgage servicing rules.

[26] Comment 41(c)(2)(iii)–1 explains that a short-term payment forbearance program is a loss mitigation option pursuant to which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program for purposes of § 1024.41(c)(2)(iii) allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.

[27] Joint Statement, *supra* note 23.

[28] Mortgage Bankers Ass'n, *Share of Mortgage Loans in Forbearance Increases to 8.55%, https://www.mba.org/2020-press-releases/june/share-of-mortgage-loans-in-forbearance-increases-to-855.*

[29] Black Knight Fin. Servs., *Mortgage Monitor* (Apr. 2020), *https://www.bls.gov/ces/.*

[30] FHFA, *FHFA Announces Payment Deferral as New Repayment Option for Homeowners in COVID–19 Forbearance Plans* (May 13, 2020), *https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Payment-Deferral-as-New-Repayment-Option-for-Homeowners-in-COVID-19-Forbearance-Plans.aspx;* HUD Mortgagee Letter 2020–06, *https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf.*

[31] FHFA, *supra* note 30.

[32] *Id.*

[33] *Id.* While initial forbearance under the CARES Act and similar programs probably constitute short-term payment forbearance programs under § 1024.41(c)(2)(iii), the anticipated repayments arrangements may not constitute short-term repayment plans under that section. *See also* Joint Statement, *supra* note 23.

[34] *See* Fannie Mae Lender Letter 2020–07, *https://singlefamily.fanniemae.com/media/22916/display;* Freddie Mac Bulletin 2020–15, *https://guide.freddiemac.com/app/guide/bulletin/2020-15?_ga=2.76149522.621170394.1590694543-1945440177.1590694543.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] HUD Mortgagee Letter 2020–06, *supra* note 30.

[39] *See, e.g.,* JDSupra, *Can Mortgage Servicers Legally Offer the GSEs' COVID deferral options?* (May 14, 2020), *https://www.jdsupra.com/legalnews/can-mortgage-servicers-legally-offer-42513/.*

forborne amount that servicers have deferred. In addition, the streamlined application procedures offered by Fannie Mae, Freddie Mac, and others may help ensure that servicers have sufficient resources to address the unusually large number of borrowers who will be exiting CARES Act or similar forbearances and may be seeking assistance in the coming months. There are circumstances where Regulation X may require a servicer to collect a complete application from a borrower before offering this type of program. However, that result may not serve the particular needs of borrowers and servicers during the COVID–19 emergency.

For these and the reasons discussed below, the Bureau is amending Regulation X to specify that servicers may offer loss mitigation options that meet certain criteria based on the evaluation of an incomplete application, and that servicers need not comply with certain other Regulation X requirements once the borrower accepts that option. These criteria are intended to align with the criteria outlined in FHFA's COVID–19 payment deferral and other comparable programs, such as FHA's COVID–19 partial claim.

The Bureau believes that this flexibility is appropriate during the COVID–19 emergency, which presents extraordinary circumstances. The Bureau will evaluate comments received under the interim final rule to determine whether it is appropriate to revise the amendments. The Bureau will also continue to monitor the market to assess consumers' experiences under these programs and the interim rule.

As part of this rulemaking, the Bureau consulted with FHFA, the Board, FDIC, NCUA, OCC, and the Department of Housing and Urban Development.

III. Legal Authority

The Bureau is issuing this interim final rule pursuant to its authority under RESPA and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[40] including the authorities discussed below. This interim final rule amends a provision previously adopted by the Bureau in the 2016 Mortgage Servicing Final Rule.[41] In doing so, the Bureau relied on one or more of the authorities discussed below, as well as other authority. The Bureau is issuing this interim final rule in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the 2013 Mortgage Servicing Final Rule,[42] as discussed in detail in the Legal Authority and Section-by-Section Analysis of the 2013 Mortgage Servicing Final Rule.

A. Respa

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which include its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, section 6(k)(1)(E) of RESPA, and 12 U.S.C. 2605(k)(1)(E), and authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. The consumer protection purposes of RESPA include ensuring that servicers respond to borrower requests and complaints in a timely manner and maintain and provide accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees and facilitating review for foreclosure avoidance options. The amendments to Regulation X in this interim final rule are intended to achieve some or all these purposes.

B. Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' RESPA is a Federal consumer financial law.

IV. Administrative Procedure Act

Under the Administrative Procedure Act,[43] notice and opportunity for public comment are not required if the Bureau for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[44] Similarly, publication of this interim final rule at least 30 days before its effective date is not required where the Bureau has identified good cause for a different effective date.[45]

The Bureau finds that prior notice and public comment are impracticable because there is insufficient time to solicit comment and finalize amendments between the FHFA's announcement of its COVID–19 payment deferral program on May 13, 2020, and its effective date of July 1, 2020. As discussed more fully in part II, the economic effects of the COVID–19 emergency have resulted quickly in major challenges in the mortgage market. Congress enacted the CARES Act in late March, making forbearances available to many borrowers with federally backed mortgages, which account for approximately 80 percent of the mortgage market.

Because the CARES Act does not specify how borrowers provided CARES Act forbearances will repay the forborne payments, Fannie Mae, Freddie Mac, FHA, and other owners or insurers of mortgage loans worked quickly after they placed borrowers in these forbearances to devise loss mitigation options for borrowers who could not afford to repay the forborne amounts in a lump sum at the conclusion of the forbearance period. FHFA, Fannie Mae, and Freddie Mac announced a COVID–19 post-forbearance program, the COVID–19 payment deferral, on May 13, 2020.[46] These programs take effect on July 1, 2020, and, because significant numbers of borrowers entered 90-day forbearances in late March and early April, this coincides with when many borrowers' forbearance periods will end. Thus, starting on July 1, 2020—absent immediate action by the Bureau—servicers would have to reconcile FHFA's COVID–19 payment deferral programs with the anti-evasion requirement in the servicing rules. As a practical matter, servicers would not be able to offer the payment deferral to some borrowers without first having them complete their loss mitigation applications, a step that would delay or obstruct relief to borrowers and frustrate the purpose and immediate need for the program.[47] It is critical that the Bureau's temporary revision to Regulation X be in effect when these forbearance programs take effect to ensure that borrowers and

[40] Public Law 111–203, 124 Stat. 1376 (2010).

[41] 81 FR 72160 (Oct. 19, 2016).

[42] 78 FR 10695 (Feb. 14, 2013).

[43] 5 U.S.C. 551 *et seq.*, 701 *et seq.*

[44] 5 U.S.C. 553(b)(B).

[45] 5 U.S.C. 553(d)(3).

[46] Borrowers who are not exiting forbearance may be also be eligible for this program if their mortgage loan became delinquent resulting from a financial hardship due, directly or indirectly, to the COVID–19 emergency. Due to the rising delinquency rate discussed in part I, significant numbers of borrowers who are not exiting forbearance could be eligible.

[47] As noted above, in the short period between the FHFA's announcement of its program and the issuance of this rule, the Bureau has consulted with stakeholders from industry, consumer groups, and regulators regarding the interaction between the FHFA's program and the servicing rules. As also noted above, industry stakeholders and consumer advocates urged the Bureau to take steps to ensure that servicers would not be in violation of Regulation X if they were to use the streamlined procedures.

mortgage servicers can take advantage of these programs.

Thus, prior public comment is impractical because there is insufficient time to solicit comment and finalize amendments before FHFA's COVID–19 payment deferral programs take effect on July 1, 2020.

For similar reasons, the Bureau also finds that delaying this rulemaking to allow for prior public comment would be contrary to the public interest, because the amendments are necessary to avoid the harm to borrowers and to the housing market that would result if the amendments did not take effect on July 1, 2020. As discussed above in part II, the Bureau believes that the FHFA COVID–19 payment deferral program and other comparable programs, described more fully in part V, will benefit both borrowers and servicers during the current COVID–19 emergency. These programs will help eligible borrowers avoid foreclosure by quickly entering an agreement regarding repayment of their forborne payments. Absent these streamlined procedures, servicers likely would require borrowers to submit a complete loss mitigation application before servicers would consider them for these programs. This could result in significant delays before borrowers can be offered the payment deferral program. In some cases, borrowers might not complete a loss mitigation application, which could prolong their delinquency, increase their costs, and put them at imminent risk of foreclosure. Given the large number of mortgage borrowers currently in forbearance or experiencing a delinquency related to the COVID–19 emergency, even a small fraction of those borrowers experiencing foreclosure could translate to large aggregate consequences. For instance, as noted above, approximately four million borrowers have entered forbearance since March 2020. Even if only one-tenth of 1 percent of these borrowers would experience foreclosure absent a deferral, that would translate to thousands of additional foreclosures. Thus, avoiding foreclosures may help prevent significant consequences for the housing market and imposing costs both on borrowers and servicers.

In addition, the streamlined procedures permitted for FHFA's COVID–19 payment deferral program would minimize the burden on servicers by allowing them to offer the payment deferral program without obtaining and processing a complete application from the borrower. This is especially important during the COVID–19 emergency because servicers will be transitioning many borrowers from forbearances to longer term solutions at the same time, potentially overwhelming servicers' systems and delaying providing relief to borrowers. Indeed, the Bureau understands that servicers have already begun receiving abnormally high call volumes, beginning in March 2020.[48]

For these same reasons, the Bureau also finds that there is good cause for this interim final rule to be effective less than 30 days after publication, to ensure that these amendments are in effect by the July 1, 2020 effective date of the FHFA COVID–19 payment deferral, to avoid harm to borrowers and to the housing market.

V. Section-by-Section Analysis

Section 1024.41 Loss Mitigation Procedures

41(c) Evaluation of loss mitigation applications

41(c)(2) Incomplete loss mitigation application evaluation

41(c)(2)(i) In general

Section 1024.41(c)(2)(i) states that, in general, servicers shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by making an offer based upon an incomplete application.[49] Currently, the provision points to two paragraphs providing exceptions to the anti-evasion requirement, § 1024.41(c)(2)(ii) and (iii). In this interim final rule, the Bureau is adding a temporary exception under new § 1024.41(c)(2)(v). As described in the section-by-section analysis of § 1024.41(c)(2)(v), the new exception applies to certain loss mitigation options that permit borrowers to delay repayment of forborne or delinquent amounts accrued due to the COVID–19 emergency. The Bureau is amending § 1024.41(c)(2)(i) to include a reference to the new exception in paragraph (c)(2)(v).

41(c)(2)(v) Certain COVID–19-Related Loss Mitigation Options

In general, § 1024.41 requires servicers to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower.[50] In this interim final rule, the Bureau is adding a temporary exception to this requirement under new § 1024.41(c)(2)(v) for certain loss mitigation options that permit borrowers to delay repayment of forborne or delinquent amounts accrued during a COVID–19-related forbearance. As described in the respective section-by-section analyses, new § 1024.41(c)(2)(v)(A) sets forth the minimum specific criteria that the loss mitigation option must meet for the new exception to apply, and new § 1024.41(c)(2)(v)(B) offers servicers relief from certain regulatory requirements when a borrower accepts a loss mitigation option under the new exception.

As discussed in part II, FHFA, FHA, and others have recently announced loss mitigation options to assist borrowers experiencing hardships related to the COVID–19 emergency in repaying amounts that accrued through forbearance or delinquency.[51] In general, these programs permit borrowers who can resume their normal periodic payments to move the forborne or delinquent payments to the end of the mortgage loan and cure any preexisting delinquency. Under those programs, the deferred amounts must not accrue interest, servicers may not charge any fee in connection with the loss mitigation option and must waive various preexisting fees, if applicable, and servicers are permitted to offer the deferral programs to borrowers based on streamlined application procedures.

The Bureau believes that the FHFA COVID–19 payment deferral and certain similar programs would provide benefits both to borrowers and servicers during the COVID–19 emergency. Through these programs, borrowers who can resume their normal periodic payments but who cannot afford to repay the forborne or delinquent amounts in the short-term should be able to eliminate the immediate potential risk of losing their homes to foreclosure, resume repaying the mortgage loan with no delinquency and no additional fees or interest, and better plan how eventually to repay the forborne or delinquent amount that has been deferred.

In addition, the streamlined application procedures authorized by Fannie Mae and Freddie Mac should help ensure that servicers have sufficient resources to address requests from the unusually large number of borrowers who will be seeking assistance from them in the coming months as many CARES Act forbearances end. And borrowers dealing with the social and economic effects of COVID–19 may be less likely

[48] *See,* Mortgage Bankers Ass'n, *MBA Survey Shows Spike in Loans in Forbearance and Servicer Call Volume, https://www.mba.org/2020-press-releases/april/mba-survey-shows-spike-in-loans-in-forbearance-servicer-call-volume.*

[49] Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to this requirement. 12 CFR 1024.30(b)(1).

[50] *Id.*

[51] FHFA, *supra* note 30; HUD Mortgagee Letter 2020–06, *supra* note 30.

than they would be under normal circumstances to take the steps necessary to complete a loss mitigation application to receive a full evaluation. This could prolong their delinquencies and put them at risk for foreclosure. Moreover, by allowing servicers to assist borrowers eligible for deferrals more efficiently, servicers will have more resources to assist borrowers who are unable to resume making their normal periodic payment, and are therefore ineligible for a FHFA COVID–19 payment deferral, submit a complete loss mitigation application for evaluation.

The Bureau acknowledges that borrowers accepting a loss mitigation offer under new § 1024.41(c)(2)(v)(A) will not receive protections under § 1024.41 that are critical in other circumstances. As the Bureau explained in the 2013 Mortgage Servicing Final Rule, the general prohibition against evaluating a borrower for all available loss mitigation options based on a single, complete application ensures that borrowers have a full understanding of their loss mitigation options when deciding on a program.[52] It also makes the loss mitigation application process more efficient by eliminating multiple, sequential evaluations that are sometimes based on similar application information,[53] with the resulting efficiency often saving borrowers time and resources.

Nonetheless, the Bureau believes that the protections set forth in new § 1024.41(c)(2)(v)(A) and (B), described below, provide sufficient safeguards for borrowers in the narrow context of the COVID–19 emergency. The Bureau solicits comment on all aspects of the new exception.

41(c)(2)(v)(A)

New § 1024.41(c)(2)(v)(A) permits servicers to offer a loss mitigation option based upon an evaluation of an incomplete application, as long as the loss mitigation option meets the criteria set forth in § 1024.41(c)(2)(v)(A)(*1*) through (*3*). Under new § 1024.41(c)(2)(v)(A)(*1*), the loss mitigation option must permit the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage insured by FHA, the mortgage insurance terminates. New § 1024.41(c)(2)(v)(A)(*1*) defines ''covered amounts'' for these purposes to include, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency,[54] including a payment forbearance program made pursuant to the CARES Act. ''Covered amounts'' under § 1024.41(c)(2)(v)(A)(*1*) also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing a similar financial hardship. And ''the term of the mortgage loan'' under § 1024.41(c)(2)(v)(A)(*1*) means the loan term according to the obligation between the parties in effect when the borrower is offered the loss mitigation option under the new exception.

Under new § 1024.41(c)(2)(v)(A)(*2*), any amounts that the borrower may delay paying as described in paragraph (c)(v)(2)(A)(*1*) must not accrue interest; the servicer must not charge any fee in connection with the loss mitigation option; and the servicer must waive all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option. And, under § 1024.41(c)(2)(v)(A)(*3*), the borrower's acceptance of the offer must end any preexisting delinquency.

The criteria in § 1024.41(c)(2)(v)(A)(*1*) through (*3*) provide borrowers with safeguards to ensure that borrowers are sufficiently protected when receiving a loss mitigation offer described in § 1024.41(c)(2)(v)(A) without an evaluation of a complete loss mitigation application. First, to qualify for the exception, new § 1024.41(c)(2)(v)(A)(*1*) requires that any forborne or delinquent principal or interest payments be moved to the end of the loan or, for loans that FHA insures, until the mortgage insurance terminates. This ensures that borrowers in forbearance programs will not face a balloon payment immediately after the forbearance period ends, and it will ease the financial strain of having to make additional periodic payments to catch up on a mortgage loan for delinquent borrowers who are not in forbearance. The alternatives could exacerbate borrowers' hardships and lead to foreclosure. As a result of the eligibility criteria under new § 1024.41(c)(2)(v)(A)(*1*), many borrowers receiving a loss mitigation option under § 1024.41(c)(2)(v)(A) will have years to plan to address the deferred payments. This may be particularly important during the COVID–19 emergency, as many borrowers may be facing extended periods of economic uncertainty.

The Bureau notes that new § 1024.41(c)(2)(v)(A)(*1*) allows for some flexibility among loss mitigation options that may qualify for the exception. For example, although the loss mitigation options must defer all forborne or delinquent principal and interest payments under new § 1024.41(c)(2)(v)(A)(*1*), the rule does not specify how servicers must treat any forborne or delinquent escrow amounts. A loss mitigation option would qualify for the new exception if it defers repayment of escrow amounts, in addition to principal and interest payments, as long as it otherwise satisfies new § 1024.41(c)(2)(v)(A).

New § 1024.41(c)(2)(v)(A)(*1*) is also flexible with respect to repayment requirements—it does not specify how a servicer must structure repayment of the deferred amounts. Requiring repayment either in a lump sum or over a specified period at the end of the loan term through additional periodic payments, among other possible approaches, would satisfy new § 1024.41(c)(2)(v)(A)(*1*). The Bureau notes that the provision specifically defines the mortgage loan term for these purposes to mean the loan term in effect when the borrower is offered the loss mitigation option. As a result, the exception under new § 1024.41(c)(2)(v)(A) is available for eligible loss mitigation options that would technically extend the term of the loan in accommodating repayment of forborne or delinquent amounts.

The Bureau also notes that new § 1024.41(c)(2)(v)(A)(*1*) provides a standard specific to loans insured by FHA. This is intended to ensure that the new exception extends to certain loss mitigation options available for FHA loans. The Bureau understands that FHA permits servicers to offer loss mitigation options that would otherwise satisfy the criteria of § 1024.41(c)(2)(v)(A) based on an evaluation of an incomplete loss mitigation application, and that these options would generally provide similar benefits to borrowers and servicers as other loss mitigation options offered under § 1024.41(c)(2)(v)(A). In some circumstances, these loss mitigation options would require repayment when the mortgage insurance terminates. The FHA-specific standard in new § 1024.41(c)(2)(v)(A)(*1*) ensures that such repayment requirements do not exclude these loss mitigation options from the new exception.

Second, for the exception to apply, new § 1024.41(c)(2)(v)(A)(*2*) requires that (1) any amounts that the borrower

[52] 78 FR at 10828.

[53] *Id.*

[54] New § 1024.41(c)(2)(v)(A) states that ''COVID–19 emergency'' has the same meaning as under CARES Act section 4022(a)(1).

may delay paying as part of the loss mitigation agreement do not accrue interest, (2) the servicer charges no fee in connection with the loss mitigation option, and (3) the servicer waives a variety of other fees promptly upon the borrower's acceptance. This requirement will prevent the application of standards that impose additional economic hardship on borrowers, better enabling the borrowers to address other financial needs during the COVID–19 emergency.

Third, for the exception to apply, new § 1024.41(c)(2)(v)(A)(*3*) requires that the borrower's acceptance of the offer end any preexisting delinquency.[55] This ensures that borrowers who accept a loss mitigation option under new § 1024.41(c)(2)(v)(A) do not face a risk of imminent foreclosure because, under existing § 1024.41(f)(1)(i), servicers are generally prohibited from making the first notice or filing required under applicable law to initiate the foreclosure process until a mortgage loan obligation is more than 120 days delinquent.

The Bureau understands that the FHFA COVID–19 payment deferral and FHA's COVID–19 partial claim, both of which are described in part II, satisfy the criteria in new § 1024.41(c)(2)(v)(A)(*1*) through (*3*). These programs have included these criteria to assist borrowers in addressing financial hardships caused by the COVID–19 emergency, in part by helping to keep their mortgage loans current following the hardship.[56] The Bureau notes, however, that the exception is not limited to those programs. Servicers may offer loss mitigation options under other programs, as long as the loss mitigation options meet the criteria described in § 1024.41(c)(2)(v)(A).

41(c)(2)(v)(B)

New § 1024.41(c)(2)(v)(B) provides servicers relief from certain regulatory requirements if a borrower accepts an offer made pursuant to new § 1024.41(c)(2)(v)(A). It states that, in that scenario, the servicer is not required to comply with § 1024.41(b)(1) or (2) with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in new § 1024.41(c)(2)(v)(A).

Section 1024.41(b)(1) and (2) generally sets forth servicers' obligations upon first receiving a borrower's loss mitigation application. Section 1024.41(b)(1) generally requires a servicer to exercise reasonable diligence in obtaining documents and information to complete the loss mitigation application. Section 1024.41(b)(2) generally requires the servicer to review the application to assess completeness and provide a written notice within five days (excluding legal public holidays, Saturdays, and Sundays) stating, among other things, that the servicer has determined that the loss mitigation application is either complete or incomplete; the additional documents and information the borrower must submit to make the application complete, if applicable; a reasonable date by which the borrower should submit the additional documents and information; and a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

These protections are part of a regulatory regime designed to ensure that borrowers generally receive an evaluation for all available loss mitigation options based upon a single application. As explained in the section-by-section analysis of new § 1024.41(c)(2)(v)(A), this regulatory regime is intended to give borrowers information about their loss mitigation options when deciding on a program and make the application process more efficient, which can save borrowers time and resources.

Notwithstanding these important benefits, however, the Bureau believes that, in the context of a loss mitigation offer under new § 1024.41(c)(2)(v)(A), the protections under § 1024.41(b)(1) and (2) introduce undue burden for both servicers and borrowers attempting to navigate the unusual challenges caused by the COVID–19 emergency. Servicers are currently dealing with an abnormally high number of requests for loss mitigation assistance due to the pandemic. According to the Mortgage Bankers Association (MBA), between early March and early June 2020, approximately four million borrowers entered into forbearance programs.[57] Over that period, the percentage of all mortgage loans in forbearance increased from 0.19 percent to 8.55 percent.[58] If servicers were required to exercise reasonable diligence to obtain a complete application for each of these borrowers when they exit the forbearance programs, as required under § 1024.41(b)(1), or to provide borrower-specific notifications of the documents and information each individual applicant must submit to complete the application, as required under § 1024.41(b)(2), it would likely interfere with their ability to provide effective and efficient assistance. And borrowers dealing with the social and economic effects of the COVID–19 emergency may be less likely than normal to take the steps necessary to complete a loss mitigation application to receive a full evaluation. The Bureau notes that, if a borrower does wish to pursue a complete application and receive the full protections of § 1024.41, they may do so notwithstanding new § 1024.41(c)(2)(v).

The Bureau stresses that servicers are required to comply with § 1024.41, including § 1024.41(b)(1) and (2), if the borrower submits a new application after accepting a loss mitigation option under new § 1024.41(c)(2)(v)(A). In general, servicers are required to comply with § 1024.41 if a borrower submits a loss mitigation application, unless the servicer has previously complied in connection with a complete application submitted by the borrower and the borrower has been delinquent at all times since submitting that complete application.[59] If a borrower has accepted a loss mitigation option offered under new § 1024.41(c)(2)(v)(A), neither of these elements will be present the first time the borrower submits a later loss mitigation application. The exception described under new § 1024.41(c)(2)(v)(A) is available only if the loss mitigation application is incomplete and, under new § 1024.41(c)(2)(v)(A)(*3*), the borrower's acceptance of the option ends any preexisting delinquency of the borrower's mortgage loan account. As a result, servicers must comply with the requirements of § 1024.41 for the first later application, which may occur during the same conversation in which the borrower accepts the offer under § 1024.41(c)(2)(v)(A).

Additionally, servicers may be required to comply with early intervention obligations if a borrower's mortgage loan account becomes delinquent after a loss mitigation option takes effect under

[55] After the borrower accepts a loss mitigation option under new § 1024.41(c)(2)(v)(A), if a periodic payment sufficient to cover principal, interest, and, if applicable, escrow becomes due and unpaid, a new delinquency would begin. *See generally* 12 CFR 1024.31(definition of delinquency).

[56] Press Release, *Freddie Mac Announces COVID–19 Payment Deferral* (May 13, 2020), *https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-announces-covid-19-payment-deferral?_ga=2.125995917.1203641316.1592241885-952089942.1591127071; see also* Fannie Mae Lender Letter (LL–2020–07) (as updated on June 10, 2020), *https://singlefamily.fanniemae.com/media/22916/display;* FHA Mortgagee Letter 2020–06 (Apr. 1, 2020), *https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf.*

[57] Mortgage Bankers Ass'n, *supra* note 28.

[58] *Id.*

[59] 12 CFR 1024.41(i).

§ 1024.41(c)(2)(v)(A).[60] These include live contact and written notification obligations that, in part, require servicers to inform borrowers of the availability of additional loss mitigation options and how the borrowers can apply.[61]

Further, the Bureau believes that a borrower whose mortgage loan account becomes delinquent following acceptance of a loss mitigation option under § 1024.41(c)(2)(v)(A) will have sufficient notice that other options may be available should the borrower wish to submit another application. In general, borrowers who previously received a forbearance will have received at least two written notifications earlier in the loss mitigation process, as required under Regulation X: (1) The written notice required under § 1024.41(b)(2) when the borrower submits the initial application requesting forbearance, and (2) written notification of the terms and conditions of the forbearance program, required under § 1024.41(c)(2)(iii), stating that the servicer offered the program based on evaluation of an incomplete application, that other loss mitigation options may be available, and that the borrower still has the option to submit a complete application to receive an evaluation for all available options.[62] Additionally, many borrowers receiving an offer under § 1024.41(c)(2)(v)(A) are likely to have received early intervention efforts by their servicers, including the written notice required under Regulation X stating, among other things, a brief description of examples of loss mitigation options that may be available, as well as application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer.[63]

In light of these protections, as well as the safeguards set forth in new § 1024.41(c)(2)(v)(A), the Bureau believes the requirements of § 1024.41(b)(1) and (2) would introduce burden for servicers and borrowers that is unnecessary in this limited context.

VI. Request for Comment

The Bureau invites comment on this interim final rule. The Bureau is particularly interested in whether the amendments appropriately balance providing flexibility to servicers to offer relief quickly during the COVID–19 emergency with providing important protections for borrowers engaged in the loss mitigation application process, such as protections from foreclosure. The Bureau also seeks comment on whether to require written disclosures for this, or any similar exceptions that the Bureau may authorize in the future. The Bureau also seeks comment on whether the Bureau should extend the exception established in new § 1024.41(c)(3)(v) to other post-forbearance loss mitigation options made available to borrowers affected by other types of disasters and emergencies.

VII. Effective Date

This interim final rule is effective on July 1, 2020.

VIII. Dodd-Frank Act Section 1022(b) Analysis

In developing this interim final rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act.[64] In developing this interim final rule, the Bureau has consulted with appropriate Federal agencies regarding the consistency of this final rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.[65]

The Bureau considered the benefits, costs, and impacts of this interim final rule against a baseline in which the Bureau takes no action. The baseline under this approach includes the CARES Act and the forbearances that have already been granted under the CARES Act and substantially similar programs.[66]

In considering the relevant potential benefits, costs, and impacts of this interim final rule, the Bureau has used feedback received to date and its knowledge of consumer financial markets. The discussion below of these potential costs, benefits, and impacts is partly qualitative, reflecting the specialized nature of the amendments. The Bureau requests comment on this discussion generally, as well as the submission of data or other information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of the interim final rule.

The interim final rule's provisions generally would decrease burden incurred by industry participants and benefit consumers by providing a limited exception to the general requirement under § 1024.41 for borrowers to submit a complete loss mitigation application before servicers may offer any loss mitigation option based on the evaluation of an incomplete application. Under the interim final rule, this limited exception would be available for loss mitigation options that permit payments forborne under an eligible forbearance, as well as payments that are due and unpaid, related to the COVID–19 emergency to be deferred to the end of the mortgage loan. As is described in more detail below, the Bureau does not believe that these changes would restrict consumer access to consumer financial products and services relative to what would occur under the baseline.

Exception to Regulation X anti-evasion provision allowing FHFA COVID–19 payment deferrals without a complete loss mitigation application. The interim final rule revises § 1024.41(c)(2)(i) and adds § 1024.41(c)(2)(v) to allow servicers to offer a payment deferral, or a similar loss mitigation option in certain circumstances based on the evaluation of an incomplete loss mitigation application. In general, for the exception to apply, borrowers must already have received a forbearance or delinquency related to the COVID–19 emergency, the forborne or delinquent payments must be deferred to the end of the mortgage loan without accruing interest and with a variety of fees waived, and the borrower's acceptance must end any preexisting delinquency. The Bureau understands that the FHFA COVID–19 payment deferral and FHA's COVID–19 partial claim satisfy the criteria, although the interim final rule is not limited to these programs.

[60] Small servicers, as defined in Regulation Z, 12 CFR 1026.41, are not subject to these requirements. 12 CFR 1024.30(b)(1).

[61] *See* 12 CFR 1024.39(a) and (b). Also, servicers are to have policies and procedures in place to advise borrowers of all of their loss mitigation options. 12 CFR 1024.38. During the COVID–19 emergency, one of the loss mitigation options to be presented to borrowers with federally backed mortgages is their right to CARES Act forbearance.

[62] *See* 12 CFR 1024.41(c)(2)(iii).

[63] The early intervention written notice is generally required no later than the 45th day of a borrower's delinquency. 12 CFR 1024.39(b). If a borrower is delinquent during a forbearance program, the servicer will likely be required to provide the written notice to the borrower.

[64] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(A)) requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact of the proposed rule on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act (12 U.S.C. 5516); and the impact on consumers in rural areas.

[65] Section 1022(b)(2)(B) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(B)) requires that the Bureau consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

[66] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

As noted above, § 1024.41(c)(2)(i), in part, prohibits evasion of the requirement for servicers to evaluate borrowers for all available loss mitigation options in a single application once they have received a complete application. In the 2013 Mortgage Servicing Final Rule, the Bureau explained its view that borrowers would benefit from this requirement, in part because borrowers would generally be better able to choose among available loss mitigation options if they are presented simultaneously. This interim final rule is unlikely to affect this benefit in most cases, given the narrow scope and particular circumstances of the exception. Even if a borrower may be interested in and eligible for another form of loss mitigation besides a deferral, receiving a deferral would not generally remove the borrower's right under § 1024.41 to submit a complete loss mitigation application and receive an evaluation for all available options after the deferral is in place. Moreover, in the specific case of the FHFA COVID–19 payment deferral program, in practice, the incomplete applications that may result in deferrals will generally be created as a result of servicer outreach specifically for the purposes of granting a deferral: Fannie Mae and Freddie Mac have directed their servicers to proactively reach out to borrowers currently under a CARES Act forbearance and to grant deferrals to all eligible borrowers.[67] Further, to be eligible for the exception under new § 1024.41(c)(2)(v)(A), a loss mitigation option must bring the loan current. In most cases, borrowers must be more than 120 days delinquent before a servicer may make the first notice or filing required under applicable law to initiate foreclosure proceedings.[68] Thus, if a borrower wishes to pursue another loss mitigation option after accepting the deferral, the borrower will still have a considerable amount of time to complete a loss mitigation application before they would be at risk for foreclosure. In summary, in these specific circumstances, the Bureau believes that allowing servicers to grant deferrals without a complete loss mitigation application will not materially affect borrowers' ability to choose among available loss mitigation options.

Borrowers will likely benefit from the new exception to the extent that they are more able to receive a payment deferral without having to submit a complete loss mitigation application. In most cases, this will result in a reduction in the time necessary to gather required documents and information. In some cases, if borrowers would not otherwise complete a loss mitigation application and could not otherwise obtain relief with respect to the forborne or delinquent payments, the interim final rule will enable borrowers to obtain the deferral in the first place. Without a deferral, borrowers may need to repay the forborne or delinquent payments immediately. Borrowers who can do so would use savings, sell assets, or incur additional debt. Borrowers who cannot immediately repay the forborne or delinquency balances could suffer foreclosure or other negative consequences. Thus, for borrowers who obtain a deferral under the new exception, the benefit of the provision is, at a minimum, the interest on savings or asset appreciation that need not be foregone or the borrowing costs that need not be incurred. For other borrowers, the benefit of the provision is the value of preventing delinquency fees and foreclosure.

The Bureau does not have data available to predict what fraction of borrowers currently under a forbearance or delinquency related to the COVID–19 emergency would not be able to complete a loss mitigation application if required to complete the application in order to receive a deferral offer. However, the Bureau believes that in the present circumstances that percentage could be substantial due to limitations in servicer capacity. As discussed above, data from the MBA indicates that as of June 7, 2020, roughly 8.55 percent of all mortgages were currently in forbearance, a total of about 4.3 million loans, almost all of which entered forbearance following the passage of the CARES Act and thus could exit forbearance around the same time. Processing complete loss mitigation applications for all these borrowers in a short period of time would likely strain many servicers' resources. This might lead to more borrowers who have incomplete applications that never reach completion and who fail to get a deferral under the baseline compared to what might occur under standard market conditions. The Bureau also does not have data available to predict how many borrowers currently in a forbearance or a delinquency related to the COVID–19 emergency would experience foreclosure but for a payment deferral offered under the exception in this interim final rule.

Covered persons will benefit from the reduction in burden from the requirement to process complete loss mitigation applications for deferrals described in § 1024.41(c)(2)(v)(A) that are eligible for the exception. Given the number of loans that are currently in a forbearance due to the COVID–19 emergency, this benefit could be substantial. This may be particularly true for loans serviced on behalf of Fannie Mae and Freddie Mac. As part of the FHFA COVID–19 payment deferral program, Fannie Mae and Freddie Mac are requiring servicers of their loans to actively attempt to contact consumers currently in a CARES Act forbearance in order to verify eligibility for a deferral.[69] Thus, with or without the interim final rule, servicers of loans that are owned, insured, or guaranteed by Fannie Mae and Freddie Mac are required to attempt to contact borrowers currently in a CARES Act forbearance. Without the interim final rule, in each case, the servicers would further need to collect documentation needed for a complete loss mitigation application, and to process the complete application before a deferral could be offered. Multiplied by millions of such loans in forbearance, these costs could be substantial.

Potential specific impacts of the interim final rule. The Bureau believes that a large fraction of depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans qualify as ''small servicers'' for purposes of the mortgage servicing rules because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. Small servicers are not subject to the relevant portions of Regulation X, § 1024.41, and so are not affected by the amendments in this interim final rule.

With respect to servicers that are not small servicers as defined in § 1026.41(e)(4), the Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the final rule on

[67] The Bureau notes as well that one of the eligibility criteria for the Fannie Mae and Freddie Mac programs is that the borrower states that they are able to resume payments under the original terms of the mortgage. The Bureau expects that borrowers in those circumstances generally will not require other types of loss mitigation.

[68] 12 CFR 1024.41(f)(1)(i).

[69] Press Release, *Freddie Mac Announces COVID019 Payment Deferral* (May 13, 2020), *https://freddiemac.gcs-web.com/news-releases/news-release-details/freddie-mac-announces-covid-19-payment-deferral?_ga=2.125995917.1203641316.1592241885-952089942.1591127071; see also* Fannie Mae Lender Letter (LL–2020–07) (as updated on June 10, 2020), *https://singlefamily.fanniemae.com/media/22916/display;* FHA Mortgagee Letter 2020–06 (Apr. 1, 2020), *https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf.*

depository institutions and credit unions with $10 billion or less in total assets that are engaged in servicing mortgage loans.

The Bureau has no reason to believe that the additional flexibility offered to covered persons by this interim final rule would differentially affect consumers in rural areas. The Bureau requests comment regarding the impact of the amended provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

IX. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) [70] does not apply to a rulemaking where general notice of proposed rulemaking is not required.[71] As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

X. Paperwork Reduction Act

The Bureau has determined that the interim final rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[72]

XI. Congressional Review Act

Pursuant to the Congressional Review Act,[73] the Bureau 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 the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' as defined by 5 U.S.C. 804(2). As discussed in part IV, the Bureau finds that there is good cause for the rule to take effect without prior notice and comment. Accordingly, this rule may take effect at such time as the Bureau determines. 5 U.S.C. 808(2).

XII. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1024

Banking, Banks, Condominiums, Consumer protection, Credit unions, Housing, Insurance, Mortgage servicing, Mortgagees, Mortgages, National banks, Savings associations, State member banks.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation X, 12 CFR part 1024, as set forth below:

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

■ 1. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5532, 5581.

Subpart C—Mortgage Servicing

■ 2. Section 1024.41 is amended by revising paragraph (c)(2)(i) and adding paragraph (c)(2)(v) to read as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(c) * * *

(2) *Incomplete loss mitigation application evaluation*—(i) *In general.* Except as set forth in paragraphs (c)(2)(ii), (iii), and (v) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

* * * * *

(v) *Certain COVID–19-related loss mitigation options.* (A) Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a borrower a loss mitigation option based upon evaluation of an incomplete application, provided that all of the following criteria are met:

(*1*) The loss mitigation option permits the borrower to delay paying covered amounts until the mortgage loan is refinanced, the mortgaged property is sold, the term of the mortgage loan ends, or, for a mortgage loan insured by the Federal Housing Administration, the mortgage insurance terminates. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''covered amounts'' includes, without limitation, all principal and interest payments forborne under a payment forbearance program made available to borrowers experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, including a payment forbearance program made pursuant to the Coronavirus Economic Stabilization Act, section 4022 (15 U.S.C. 9056); it also includes, without limitation, all other principal and interest payments that are due and unpaid by a borrower experiencing financial hardship due, directly or indirectly, to the COVID–19 emergency. For purposes of this paragraph (c)(2)(v)(A)(*1*), ''COVID–19 emergency'' has the same meaning as under the Coronavirus Economic Stabilization Act, section 4022(a)(1) (15 U.S.C. 9056(a)(1)). For purposes of this paragraph (c)(2)(v)(A)(*1*), ''the term of the mortgage loan'' means the term of the mortgage loan according to the obligation between the parties in effect when the borrower is offered the loss mitigation option.

(*2*) Any amounts that the borrower may delay paying as described in paragraph (c)(2)(v)(A)(*1*) of this section do not accrue interest; the servicer does not charge any fee in connection with the loss mitigation option; and the servicer waives all existing late charges, penalties, stop payment fees, or similar charges promptly upon the borrower's acceptance of the loss mitigation option.

(*3*) The borrower's acceptance of an offer made pursuant to paragraph (c)(2)(v)(A) of this section ends any pre-existing delinquency on the mortgage loan.

(B) Once the borrower accepts an offer made pursuant to paragraph (c)(2)(v)(A) of this section, the servicer is not required to comply with paragraph (b)(1) or (2) of this section with regard to any loss mitigation application the borrower submitted prior to the servicer's offer of the loss mitigation option described in paragraph (c)(2)(v)(A) of this section.

* * * * *

Dated: June 23, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–13853 Filed 6–29–20; 8:45 am]

BILLING CODE 4810–AM–P

[70] 5 U.S.C. 601 *et seq.*

[71] 5 U.S.C. 603(a), 604(a).

[72] 44 U.S.C. 3501 *et seq.*

[73] 5 U.S.C. 801 *et seq.*

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2020–0040]

RIN 3245–AH54

Business Loan Program Temporary Changes; Paycheck Protection Program—Certain Eligible Payroll Costs

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted on its website an interim final rule relating to the implementation of Sections 1102 and 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act) (published in the **Federal Register** on April 15, 2020). Section 1102 of the Act temporarily adds a new product, titled the ''Paycheck Protection Program,'' to the U.S. Small Business Administration's (SBA's) 7(a) Loan Program. Subsequently, SBA issued a number of interim final rules implementing the Paycheck Protection Program. This interim final rule supplements the previously posted interim final rules by providing additional guidance on certain eligible payroll costs.

DATES:

Effective Date: The provisions in this interim final rule are effective June 26, 2020.

Comment Date: Comments must be received on or before July 30, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0040 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: A Call Center Representative at 833–572–0502, or the local SBA Field Office; the list of offices can be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide are experiencing economic hardship as a direct result of the Federal, State, tribal, and local public health measures that are being taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of restaurants, bars, and gyms. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, have been implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency.

Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP).

On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP. On June 5, 2020, the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) (Pub. L. 116–142), which changed provisions of the PPP relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans.

This interim final rule addresses payroll costs that may be included on a PPP loan application submitted by certain boat owners or operators that are engaged in catching fish or other forms of aquatic animal life (fishing boat owners) and that have hired one or more crewmembers who are regarded as independent contractors or otherwise self-employed for certain federal tax purposes under 26 U.S.C. 3121(b)(20) of the Internal Revenue Code (the Code). A crewmember may be described in Section 3121(b)(20) of the Code if the fishing boat on which he or she works has an operating crew that is normally made up of fewer than 10 individuals and the crewmember receives as compensation for his or her work a share of the boat's catch or of the proceeds from the sale of the catch, in an amount that depends on the amount of the catch. Such a crewmember generally may not receive additional cash remuneration or other compensation for his or her services with respect to the fishing boat. A fishing boat owner must report compensation paid to such a crewmember on Box 5 of IRS Form 1099–MISC. The First Interim Final Rule, posted on April 2, 2020, provided that because independent contractors have the ability to apply for a PPP loan on their own, they do not count for purposes of another applicant's PPP loan calculation. 85 FR 20811, 20813 (April 15, 2020). Because crewmembers described in Section 3121(b)(20) of the Code are treated as independent contractors or otherwise self-employed for certain federal tax purposes, fishing boat owners have faced uncertainty about whether to report payments to such crewmembers as a payroll cost on their PPP loan applications.

On April 14, 2020, SBA, in consultation with Treasury, posted an interim final rule explaining that the self-employment income of the general active partners of a partnership could be reported as a payroll cost, up to $100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.[1] 85 FR 21747, 21748 (April 20, 2020). The Administrator, in consultation with the Secretary, has determined that the relationship of a fishing boat owner and a crewmember described in Section 3121(b)(20) of the Code is analogous to a joint venture or partnership. For example, the fishing boat owner and crewmembers each contribute labor or resources to a common commercial enterprise, and the owner and crewmembers share in the enterprise's profits. In order to

[1] Guidance describing how to calculate partnership PPP loan amounts and defining the self-employment income of partners was posted on April 24, 2020 (*see* How to Calculate Maximum Loan Amounts, Question 4, at *https://www.sba.gov/sites/default/files/2020-06/How-to-Calculate-Loan-Amounts-508_0.pdf*).

harmonize SBA's interim final rule regarding partnerships with SBA's interim final rule described above regarding independent contactors, the Administrator, in consultation with the Secretary, has determined that in the event of a conflict (*i.e.,* a case where one or more partners in a partnership are treated as independent contractors for tax purposes), the rules regarding partnership will govern. Accordingly, as described below, this interim final rule (1) provides that a fishing boat owner may include compensation reported on Box 5 of Form 1099–MISC and paid to a crewmember described in Section 3121(b)(20) as a payroll cost in its PPP loan application, and (2) addresses a fishing boat owner's eligibility to obtain loan forgiveness of payroll costs paid to a crewmember who has obtained his or her own PPP loan.

II. Comments and Immediate Effective Date

This interim final rule is effective without advance notice and public comment because Section 1114 of the CARES Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. In addition, SBA has determined that there is good cause for dispensing with advance public notice and comment on the grounds that that it would be contrary to the public interest. Specifically, advance public notice and comment would defeat the purpose of this interim final rule given that SBA's authority to guarantee PPP loans expires on June 30, 2020. These same reasons provide good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act (APA). *See* 5 U.S.C. 553(b)(B). Although this interim final rule is effective on or before date of filing, comments are solicited from interested members of the public on all aspects of the interim final rule, including Section III below. These comments must be submitted on or before July 30, 2020. The SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program—Additional Guidance on Certain Eligible Payroll Costs

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under a new 7(a) loan program titled the ''Paycheck Protection Program.'' Loans guaranteed under the Paycheck Protection Program (PPP) will be 100 percent guaranteed by SBA, and the full principal amount of the loans may qualify for loan forgiveness. The purpose of this interim final rule is to provide additional guidance concerning payroll costs that may be reported in connection with certain PPP loan and loan forgiveness applications.

1. Calculation of Payroll Costs of Certain Fishing Boat Owners

May fishing boat owners include payroll costs in their PPP loan applications that are attributable to crewmembers described in Section 3121(b)(20) of the Internal Revenue Code?

Yes. The Administrator, in consultation with the Secretary, has determined that the relationship of a crewmember described in Section 3121(b)(20) of the Internal Revenue Code (Code) and a fishing boat owner or operator (fishing boat owner) is analogous to a joint venture or partnership for purposes of the PPP. As a result, a fishing boat owner may include compensation reported on Box 5 of IRS Form 1099–MISC and paid to a crewmember described in Section 3121(b)(20) of the Code, up to $100,000 annualized, as a payroll cost in its PPP loan application. The Administrator, in consultation with the Secretary, has determined that this treatment is appropriate to effectuate the purposes of the CARES Act to provide assistance to eligible PPP borrowers, including business concerns that operate as partnerships, affected by the COVID–19 emergency.

2. Calculation of Certain Payroll Costs Eligible for Loan Forgiveness

May a fishing boat owner include as payroll costs in its application for loan forgiveness any compensation paid to a crewmember who received his or her own PPP loan and is seeking forgiveness for amounts of compensation the crewmember received for performing services described in Section 3121(b)(20) of the Code with respect to that owner's fishing boat?

No. If a fishing boat crewmember obtains his or her own PPP loan and seeks forgiveness of that loan based in part on compensation from a particular fishing boat owner, the fishing boat owner cannot also obtain PPP loan forgiveness based on compensation paid to that same crewmember. This restriction applies only if the crewmember is performing services described in Section 3121(b)(20) of the Code for the particular fishing boat owner. The Administrator, in consultation with the Secretary, has determined that this restriction is necessary to prevent fishing boat owners and crewmembers from claiming forgiveness for the same payroll costs (for the owner's PPP loan, the compensation to a specific crewmember; for the crewmember's PPP loan, the compensation from the owner to that crewmember). As a result, only the crewmember's PPP loan is eligible for forgiveness, and the owner may not obtain forgiveness for any payroll costs paid to the crewmember. The fishing boat owner is responsible for determining whether any of its crewmembers during the covered period for loan forgiveness received their own PPP loans. Due to the increased risk of duplicate payroll costs, PPP loans to fishing boat owners are more likely to be subject to an SBA loan review.

3. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov.* Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

This interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563, and is considered a major rule under the Congressional Review Act. SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency. This rule's designation under Executive Order 13771 will be informed by public comment.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in Section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this rule will not impose new or modify existing recordkeeping or reporting requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to Section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities.

The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b).

Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: *How to Comply with the Regulatory Flexibility Act, Ch.1. p.9*. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator.

[FR Doc. 2020–14128 Filed 6–26–20; 11:15 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0164; Airspace Docket No. 20–ASO–3]

RIN 2120–AA66

Amendment of Class D Airspace and Revocation of Class E Airspace; Bogue, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace by updating the geographic coordinates, and removes Class E airspace extending upward from 700 feet above the surface at Bogue Field Marine Corps Auxiliary Field, Bogue, NC, at the request of the US Marine Corps. Class E airspace is no longer required, as there are no instrument approaches into Bogue Field MCALF. This action also replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the legal description of associated Class D airspace. This action enhances the safety and management of controlled airspace within the national airspace system.

DATES: Effective 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D airspace and removes Class E airspace extending upward from 700 feet above the surface at Bogue Field MCALF, Bogue, NC, due to the airspace no longer being necessary.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 14809, March 16, 2020) for Docket No. FAA–2020–0164 to amend Class D airspace by updating the geographic coordinates, and remove Class E airspace extending upward from 700 feet above the surface at Bogue Field Marine Corps Auxiliary Field, Bogue, NC as the airport has no instrument approaches. Therefore, the Class E airspace is no longer necessary. This action enhances the safety and management of controlled airspace within the national airspace system.

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

Class D and Class E airspace designations are published in Paragraphs 5000 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class D airspace at Bogue Field Marine Corps Auxiliary Field, Bogue, NC, by updating the geographic coordinates, and removes Class E airspace extending upward from 700 feet above the surface at Bogue Field Marine Corps Auxiliary Field, Bogue, NC as the airport has no instrument approaches. This action enhances the safety and management of controlled airspace within the national airspace system. This action also replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the legal description of associated Class D airspace.

These changes are necessary for continued safety and management of IFR operations at this airport.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO NC D Bogue, NC [Amended]

Bogue Field MCALF, NC
(Lat. 34°41′24″ N, long. 77°01′45″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Bogue Field MCALF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO NC E5 Bogue, NC [Removed]

Issued in College Park, Georgia, on June 24, 2020.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2020–13994 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2014–0504; Amdt. No.: 121–282B]

RIN 2120–AJ87

Pilot Professional Development; Technical Amendments

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

ACTION: Final rule; technical amendments.

SUMMARY: The Federal Aviation Administration (FAA) is making technical amendments to the Pilot Professional Development (PPD) final rule, which was published on February 25, 2020. That document inadvertently failed to update two cross-references. This document corrects the final regulations.

DATES: Effective June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Sheri Pippin, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8166; email: *sheri.pippin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

Because this action merely makes technical amendments to a published final rule, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

Background

On February 25, 2020, the FAA published the PPD final rule (85 FR 10896). After that rule was published, the FAA discovered two minor errors in § 121.409 and § 121.424 of Title 14 of the Code of Federal Regulations that require correction. Section 121.409(c)(1) erroneously references § 121.424(d). This final rule redesignated § 121.424(d) as § 121.424(e). Additionally, the newly finalized § 121.424(f) erroneously references § 121.424(b)(2), which was redesignated in the PPD final rule as § 121.424(c)(2).

List of Subjects in 14 CFR Part 121

Air carriers, airmen, aviation safety, charter flights, reporting and recordkeeping requirements, safety, transportation.

Accordingly, FAA corrects 14 CFR part 121 by making the following technical corrections:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95 126 Stat 62 (49 U.S.C. 44732 note).

■ 2. In § 121.409, revise paragraph (c)(1) to read as follows:

§ 121.409 Training courses using flight simulation training devices.

* * * * *

(c) * * *

(1) A course of pilot training in an FFS as provided in § 121.424(e); or

* * * * *

■ 3. In § 121.424, revise paragraph (f) to read as follows:

§ 121.424 Pilots: Initial, transition, conversion, and upgrade flight training.

* * * * *

(f) Compliance with paragraphs (a)(2) and (c)(2) of this section is required no later than March 12, 2019.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 106(g), 44701(a), and Sec. 206 of Public Law 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note) in Washington, DC, on June 8, 2020.

Brandon Roberts,

Deputy Executive Director, Office of Rulemaking.

[FR Doc. 2020–12710 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0299]

Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie Zone for Events in July

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will establish a safety zone for the Mackinac Island 4th of July fireworks. Our regulation for safety zones within the Captain of the Port Sault Sainte Marie Zone identifies the regulated area for this safety zone. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement periods listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or a designated representative.

DATES: The regulations in 33 CFR 165.918 will be enforced on or around July 4, 2020, from thirty minutes before sunset to thirty minutes after the end of the fireworks display.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email BOSN4 Robert Gruschow, Waterways Management, U.S. Coast Guard Sector Sault Sainte Marie; telephone (906)-253–2462, email *Robert.A.Gruschow@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.918 as per the time, dates, and locations in Table 1 below.

TABLE 1

Event	Location	Event date
(11) Mackinac Island Fourth of July Celebration Fireworks; Mackinac Island, MI.	All U.S. navigable waters of Lake Huron within an approximate 750-foot radius from the fireworks launch site, centered approximately 1000 yards west of Round Island Passage Light, at position 45°50′34.92″ N, 084°37′38.16″ W.	Beginning on or around July 4th; 30 minutes before sunset and 30 minutes after the end of the fireworks display.

This action is being taken to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sault Sainte Marie or a designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie, or an on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will also provide notice through other means, which will include Broadcast Notice to Mariners, Local Notice to Mariners, distribution in leaflet form, and on-scene oral notice. The Captain of the Port Sault Sainte Marie or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (906) 635–3319.

Dated: June 25, 2020.

P.S. Nelson,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2020–14136 Filed 6–29–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0371]

RIN 1625–AA00

Safety Zone; Devos Fireworks Little Traverse Bay, Bay Harbor, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 560-ft radius of a fireworks display. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Sainte Marie.

DATES: This rule is effective June 30, 2020 through 11:59 p.m., July 3, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0371 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Sean V. Murphy, U.S. Coast Guard Sector Sault Sainte Marie Waterways Management, U.S. Coast Guard; telephone 906–635–3223, email *ssmprevention@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable due to late notification from the event sponsor of the particulars of the fireworks display. This safety zone is needed to be established by July 3, 2020 in order to protect the public from the dangers associated with a fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because action is needed to establish a safety zone in order to protect the public from the hazards associated with the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sault Sainte Marie (COTP) has determined that potential hazards associated with a fireworks display on July 3, 2020 will be a safety concern for anyone within a 560-foot radius of the navigable waters surrounding the fireworks launching location. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. until 11:59 p.m. on July 3, 2020. The safety zone will cover all navigable waters within 560 feet of a fireworks display in Little Traverse Bay near Bay Harbor, MI. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Little Traverse Bay, MI. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 2 hours that will prohibit entry within 560 feet of a fireworks display in Little Traverse Bay, MI. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0371 to read as follows:

§ 165.T09–0371 Devos Fireworks Little Traverse Bay, Bay Harbor, MI.

(a) *Location.* The following area is a safety zone: All navigable water within 420 feet of the fireworks launching location in position 45°21′58.80″ N, 85°01′54.38″ W (NAD 83).

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sault Sainte Marie (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his designated representative.

(2) Before a vessel operator may enter or operate within the safety zone, they must obtain permission from the Captain of the Port, Sault Sainte Marie, or his designated representative via VHF Channel 16 or telephone at (906) 635–3233. Vessel operators given permission to enter or operate in the safety zone must comply with all orders given to them by the Captain of the Port, Sault Sainte Marie or his designated representative.

(d) *Enforcement period.* This section will be enforced from 10 p.m. through 11:59 p.m. on July 3, 2020.

Dated: June 24, 2020.

A.E. Florentino,

Commander, U.S. Coast Guard, Acting Captain of the Port Sault Sainte Marie.

[FR Doc. 2020–14038 Filed 6–29–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0388]

Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie Zone for Events in July

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will establish safety zones for the St. Ignace Festivals of Fireworks Celebration fireworks starting in July, 2020 to provide for the safety of life on navigable waterways. Our regulation for safety zones within the Captain of the Port Sault Sainte Marie Zone identifies the regulated area for these safety zones. During the enforcement periods, vessels must stay out of the established safety zone and may only enter with permission from the designated representative of the Captain of the Port Sault Sainte Marie.

DATES: The regulations in 33 CFR 165.918 will be enforced on Saturday nights from July 4, 2020, through September 6, 2020, from thirty minutes before sunset to thirty minutes after the end of the fireworks display.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email BOSN4 Robert Gruschow, Waterways Management, U.S. Coast Guard Sector

Sault Sainte Marie; telephone (906)-253–2462, email *Robert.A.Gruschow@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.918 as per the time, dates, and locations in Table 1.

TABLE 1

[Datum NAD 1983]

Event	Location	Event date
(4) Festivals of Fireworks Celebration Fireworks; St. Ignace, MI.	All U.S. navigable waters of East Moran Bay within an approximate 1000-foot radius from the fireworks launch site at the end of the Starline Mill Slip, centered in position 45°52′24.62″ N, 084°43′18.13″ W.	Beginning July 4th and following Saturdays to September 6, 2020; 30 minutes before sunset and 30 minutes after the end of the fireworks display.

This action is being taken to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sault Sainte Marie or a designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie, or an on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will also provide notice through other means, which will include Broadcast Notice to Mariners, Local Notice to Mariners, distribution in leaflet form, and on-scene oral notice. The Captain of the Port Sault Sainte Marie or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (906) 635–3319.

Dated: June 25, 2020.

P.S. Nelson,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2020–14141 Filed 6–29–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0298]

Safety Zones; Recurring Safety Zone in Captain of the Port Sault Sainte Marie

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will establish safety zones for the Mackinaw Area Visitors Bureau Friday Night fireworks. Our regulation for safety zones within the Captain of the Port Sault Sainte Marie Zone identifies the regulated area for this safety zone. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement periods listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or a designated representative.

DATES: The regulations in 33 CFR 165.918 will be enforced on Friday nights from July 3, 2020 through September 12, 2020, from thirty minutes before sunset to thirty minutes after the end of the fireworks display.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email BOSN4 Robert Gruschow, Waterways Management, U.S. Coast Guard Sector Sault Sainte Marie; telephone (906)-253–2462, email *Robert.A.Gruschow@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.918 as per the time, dates, and locations in Table 1 below.

TABLE 1

Event	Location	Event date
(1) Mackinaw Area Visitors Bureau Friday Night Fireworks; Mackinaw City, MI.	All U.S. navigable waters of the Straits of Mackinac within an approximate 1000-foot radius from the fireworks launch site located in position 45°46′35.48″ N, 084°43′16.20″ W.	Friday nights July 3 to September 12, 2020; 30 minutes before sunset and 30 minutes after the end of the fireworks display.

This action is being taken to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sault Sainte Marie or a designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie, or an on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will also provide notice through other means, which will include Broadcast Notice to Mariners, Local Notice to Mariners, distribution in leaflet form, and on-scene oral notice. The Captain of the Port Sault Sainte Marie or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (906) 635–3319.

Dated: June 25th, 2020.

P.S. Nelson,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2020–14135 Filed 6–29–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0297]

Safety Zones; Recurring Safety Zone in Captain of the Port Sault Sainte Marie Zone for Events in July

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will establish a safety zone for the Sault Sainte Marie 4th of July fireworks. Our regulation for safety zones within the Captain of the Port Sault Sainte Marie Zone identifies the regulated area for this safety zone. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement periods listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or a designated representative.

DATES: The regulations in 33 CFR 165.918 will be enforced on or around July 4, 2020, from thirty minutes before sunset to thirty minutes after the end of the fireworks display.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email BOSN4 Robert Gruschow, Waterways Management, U.S. Coast Guard Sector Sault Sainte Marie; telephone (906)–253–2462, email *Robert.A.Gruschow@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.918 as per the time, dates, and locations in Table 1 below.

TABLE 1

Event	Location	Event date
(10) Sault Sainte Marie Fourth of July Celebration Fireworks; Sault Sainte Marie, MI.	All U.S. navigable waters of the St. Marys River within an approximate 1000-foot radius around the eastern portion of the U.S. Army Corp of Engineers Soo Locks North East Pier, centered in position: 46°30′19.966″ N, 084°20′31.61″ W.	Beginning on or around July 4th; 30 minutes before sunset and 30 minutes after the end of the fireworks display.

This action is being taken to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sault Sainte Marie or a designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie, or an on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will also provide notice through other means, which will include Broadcast Notice to Mariners, Local Notice to Mariners, distribution in leaflet form, and on-scene oral notice. The Captain of the Port Sault Sainte Marie or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (906) 635–3319.

Dated: June 25, 2020.

P.S. Nelson,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie,

[FR Doc. 2020–14130 Filed 6–29–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0300]

Safety Zones; Recurring Safety Zone in Captain of the Port Sault Sainte Marie Zone for Events in July

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will establish a safety zone for the Alpena 4th of July fireworks. Our regulation for safety zones within the Captain of the Port Sault Sainte Marie Zone identifies the regulated area for this safety zone. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement periods listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie or a designated representative.

DATES: The regulations in 33 CFR 165.918 will be enforced on or around July 4, 2020, from thirty minutes before sunset to thirty minutes after the end of the fireworks display.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email BOSN4 Robert Gruschow, Waterways Management, U.S. Coast Guard Sector Sault Sainte Marie; telephone (906)–253–2462, email *Robert.A.Gruschow@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.918 as per the time, dates, and locations in Table 1 below.

TABLE 1

Event	Location	Event date
(16) Alpena Fourth of July Celebration Fireworks; Alpena, MI.	All U.S. navigable waters of Lake Huron within an approximate 1000-foot radius of the fireworks launch site located near the end of Mason Street, South of State Avenue, at position 45°02′42″ N, 083°26′48″ W.	Beginning on or around July 4th; 30 minutes before sunset and 30 minutes after the end of the fireworks display.

This action is being taken to protect the safety of life and property on navigable waters prior to, during, and immediately after firework displays. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Sault Sainte Marie or a designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Sault Sainte Marie, or an on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will also provide notice through other means, which will include Broadcast Notice to Mariners, Local Notice to Mariners, distribution in leaflet form, and on-scene oral notice. The Captain of the Port Sault Sainte Marie or a designated on-scene representative may be contacted via Channel 16, VHF–FM or at (906) 635–3319.

Dated: June 25, 2020.

P.S. Nelson,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2020–14140 Filed 6–29–20; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 20–562; FRS 16806]

New Location and Hours for Filing Hand-Carried Documents at Commission Headquarters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Office of Managing Director of the Federal Communications Commission (Commission) adopts an Order that establishes the new location and hours for filing hand-carried documents at Commission headquarters and modifies the relevant rule provisions to reflect such changes.

DATES: Effective June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Warren Firschein, Office of Managing Director at (202) 418–2653 or Mindy Ginsburg, Office of Managing Director at (202) 418–0983.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 20–562, adopted on May 27, 2020 and released on May 28, 2020. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554, or by downloading the text from the Commission's website at *https://www.fcc.gov/document/new-location-filing-hand-carried-documents-fcc-headquarters.*

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

1. Section 603 of the Regulatory Flexibility Act, as amended, requires a regulatory flexibility analysis in notice and comment rulemaking proceedings. See 5 U.S.C. 603(a). As we are adopting these rules without notice and comment, no regulatory flexibility analysis is required.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

3. The Commission will not send a copy of the Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not "substantially affect the rights or obligations of non-agency parties." See 5 U.S.C. 804(3)(C).

II. Introduction

4. In the Order, the Office of Managing Director of the Federal Communications Commission amends its rules to reflect the new address for filing hand-carried documents at the Commission's headquarters and establish a new closing time for accepting such filings. Effective upon publication in the **Federal Register**, hand-carried documents are to be filed at 9050 Junction Drive, Annapolis Junction, MD 20701. After COVID–19 restrictions are lifted, this will be the only location where hand-carried paper filings for the Commission will be accepted. At that time, the filing window for hand-carried documents will be open from 8:00 a.m. to 4:00 p.m., Monday through Friday. The Commission will not accept hand-carried filings outside of those hours. These changes are being made to enhance security measures and in conjunction with the Commission's upcoming relocation to a new headquarters building located at 45 L Street NE, Washington, DC 20554, which is scheduled to occur later this year.

5. This action is taken pursuant to the authority delegated by §§ 0.11 and 0.231 of the Commission's rules, 47 CFR 0.11 and 0.231.

III. Ordering Clauses

6. *Accordingly,* pursuant to sections 4(e) and 5(e) of the Communications Act of 1934, as amended, 47 U.S.C. 154(e) and 155(d), *it is ordered* that part 0 of the Commission's rules are *amended* in the manner indicated in the Appendix of the Order, to be effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 1 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.401 by revising paragraph (a)(1)(ii) to read as follows:

§ 0.401 Location of Commission offices.

* * * * *

(a) * * *

(1) * * *

(ii) All hand-carried documents should be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission and delivered to 9050 Junction Drive, Annapolis Junction, MD 20701.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 4. Amend § 1.4 by revising the first sentence of paragraph (f) to read as follows:

§ 1.4 Computation of time.

* * * * *

(f) Except as provided in § 0.401(b) of this chapter, all petitions, pleadings, tariffs or other documents not required to be accompanied by a fee and which are hand-carried must be tendered for filing in complete form, as directed by the Commission's rules, with the Office of the Secretary before 4 p.m., at the address indicated in 47 CFR 0.401(a). * * *

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[FR Doc. 2020–12255 Filed 6–29–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 07–135, CC Docket No. 01–92; FCC 18–176; FRS 16897]

Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Connect America Fund contained in the Commission's *Rate-of-Return Order,* FCC 18–176. This document is consistent with the *Rate-of-Return Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: The amendments to § 54.313(f)(5) published at 84 FR 4711, February 19, 2019 is effective June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission submitted revised information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on May 13, 2020, which were approved by OMB on June 22, 2020. The information collection requirements are contained in the Commission's *Rate-of-Return Order,* FCC 18–176 published at 84 FR 4711, February 19, 2019. The OMB Control Number is 3060–0233. If you have any comments on the burden estimates listed in the following, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0233, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on June 22, 2020, for the information collection requirements contained in 47 CFR 54.313(f)(5) published at 84 FR 4711, February 19, 2019. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0233.

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

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

OMB Control Number: 3060–0233.

OMB Approval Date: June 22, 2020.

OMB Expiration Date: June 30, 2023.

Title: Part 54—Rate-of-Return Carrier Universal Service Reporting Requirements.

Form Number: FCC Form 507, FCC Form 508 and FCC Form 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,095 respondents; 4,044 responses.

Estimated Time per Response: 1–22 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, 218–220, 221(c), 254, and 303(r).

Total Annual Burden: 43,638 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: In order to determine which carriers are entitled to universal service support, all rate-of-return regulated (rate-of-return) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by section 54.1305 for each of its study areas and, if applicable, for each wire center as that term is defined in 47 CFR part 54. See 47 CFR 54.1305 and 54.5. The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated occasionally pursuant to section 54.1306. See 47 CFR 54.1306. Pursuant to section 54.1307, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. See 47 CFR 54.1307. An incumbent LEC is defined as a carrier that meets the definition of ''incumbent local exchange carrier'' in section 51.5 of the Commission's rules. See 47 CFR 51.5.

In March 2016, the Commission adopted the *Rate-of-Return Reform Order,* 81 FR 24282, April 25, 2016, to continue modernizing the universal service support mechanisms for rate-of-return carriers. The *Rate-of-Return Reform Order* replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. The *Rate-of-Return Reform Order* replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. For the purposes of calculating and monitoring CAF–BLS, rate-of-return carriers that receive CAF–BLS must file common line and consumer broadband-only loop counts on FCC Form 507, forecasted common line and consumer broadband-only loop costs and revenues on FCC Form 508, and actual common line and consumer broadband-only loop costs and revenues on FCC Form 509. See 47 CFR 54.903(a).

In December 2018, the Commission adopted the *December 2018 Rate-of-Return Reform Order,* 84 FR 4711, February 19, 2019, to require rate-of-return carriers that receive Alternative Connect American Model (A–CAM) or Alaska Plan support to file line count data on FCC Form 507 as a condition of high-cost support. Historically, all rate-of-return carriers received CAF BLS or, prior to that, ICLS, and were required to file line count data on FCC Form 507 as a condition of that support. In recent years, some rate-of-return carriers have elected to receive A–CAM I, A–CAM II, or Alaska Plan instead, and those carriers were not required to file line count data because the requirement to file applied only to rate-of-return carriers receiving CAF BLS. In order to restore a data set that the Commission relied on to evaluate the effectiveness of its high-cost universal service programs, the Commission revised its rules in that Order to require all rate-of-return carriers to file that data. While carriers receiving CAF–BLS must file the line count data on March 31 for line counts as of the prior December 31, the A–CAM I, A–CAM II, and Alaska Plan carriers will be required to file on July 1 of each year to coincide with other existing requirements in OMB Control No. 3060–0986. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 33 FCC Rcd 11893 (2018) (*2018 Rate-of-Return Reform Order*). *See also* 47 CFR 54.313(f)(5).

The Commission therefore revises this information collection. We also increased the burdens associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–14078 Filed 6–29–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0030; FF09E21000 FXES11110900000 201]

RIN 1018–BE85

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Elfin-Woods Warbler

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the elfin-woods warbler (*Setophaga angelae*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 27,488 acres (11,125 hectares) in the Maricao, San Germán, Sabana Grande, Yauco, Río Grande, Canóvanas, Las Piedras, Naguabo, Ceiba, Cayey, San Lorenzo, Guayama, and Patillas municipalities in Puerto Rico fall within the boundaries of the critical habitat designation. The effect of this regulation is to extend the Act's protections to the elfin-woods warbler's critical habitat.

DATES: This rule is effective on July 30, 2020.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030 and at *http://www.fws.gov/caribbean.* Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0030 and at *http://www.fws.gov/caribbean.* Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Service website and in the preamble at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 km 5.1, Boquerón, PR 00622; telephone 787–851–7297. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that any species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. We published in the **Federal Register** a final rule to list the elfin-woods warbler as a threatened species on June 22, 2016 (81 FR 40534). On that same day, we also published a proposed rule to designate critical habitat for the elfin-woods warbler (81 FR 40632). Designations of critical habitat can only be completed by issuing a rule.

What this rule does. This rule will finalize the designation of critical habitat for the elfin-woods warbler under the Act. Accordingly, this rule revises part 17 of title 50 of the Code of Federal Regulations at 50 CFR 17.95.

Basis for this rule. Under section 4(a)(3) of the Act, if we determine that any species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species, as interpreted by regulation at 50 CFR 424.12. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

The critical habitat we are designating in this rule, in three units comprising 27,488 acres (ac) (11,125 hectares (ha)), constitutes our current best assessment of the areas that meet the definition of critical habitat for the elfin-woods warbler.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat. We published this announcement and solicited public comments on the draft economic analysis (81 FR 40632; June 22, 2016).

Peer review and public comment. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of actions under the Act, we sought the expert opinions of six independent specialists with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. The purpose of peer review is to ensure that our designation is based on scientifically sound data and analyses. We received responses from two peer reviewers on our technical assumptions, analysis, and whether or not we used the best scientific data available. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final designation of critical habitat. We also considered all comments and information received from the public during the comment period for the proposed designation of critical habitat.

Previous Federal Actions

All previous Federal actions are described in the proposed and final listing rules for the elfin-woods warbler as a threatened species under the Act published on September 30, 2015 (80 FR 58674) and June 22, 2016 (81 FR 40534). Concurrently with the final listing rule, we adopted a rule under section 4(d) of the Act to provide for the conservation of the elfin-woods warbler. We published our proposed rule to designate critical habitat for the elfin-woods warbler on June 22, 2016 (81 FR 40632).

On August 27, 2019, we published a final rule in the **Federal Register** (84 FR 45020) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on September 26, 2019, but, as stated in that rule, the amendments it sets forth apply to ''rules for which a proposed rule was published after September 26, 2019.'' We published our proposed critical habitat designation for the elfin-woods warbler on June 22, 2016 (81 FR 40534); therefore, the amendments set forth in the August 27, 2019, final rule at 84 FR 45020 do not apply to this final designation of critical habitat for the elfin-woods warbler. Nonetheless, we note that this designation is also consistent with the standards set forth in the August 27, 2019 amendments to the regulations.

Summary of Comments and Recommendations

In the June 22, 2016, proposed critical habitat rule (81 FR 40632), we requested that all interested parties submit written comments on the proposed designation of critical habitat for the elfin-woods warbler by August 22, 2016. We also contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule and draft economic analysis (DEA). A newspaper notice inviting general public comment was published in Primera Hora on June 24, 2016. We did not receive any requests for a public hearing, and we did not receive any comments on the DEA.

During the comment period, we received two comment letters from peer reviewers directly addressing the proposed critical habitat designation and one public comment. All substantive information provided during the comment period has either been incorporated directly into this final determination or addressed below, as appropriate.

Peer Reviewer Comments

(1) *Comment:* A peer reviewer recommended adding the westernmost patches of forest within the boundaries of the Maricao Commonwealth Forest (MCF) as critical habitat for the elfin-woods warbler. According to the reviewer, these forest patches qualify as essential habitat for the conservation of the species for breeding, reproduction, or rearing of offspring. The reviewer also reported two observations of elfin-woods warbler in those patches.

Our Response: We reviewed the westernmost boundaries of Unit 1 (Maricao) of the proposed critical habitat and the new data documenting the species' occurrence in the area. Based on the reanalysis of the area and the data provided by the peer reviewer, we revised Unit 1 to add approximately 363 ac (146 ha). This additional area comprises 2.8 percent of Unit 1. The Puerto Rico Department of Natural and Environmental Resources (PDNER) manages 97.8 percent of the additional area, in the MCF, with the remaining 2.2 percent (8 ac) of the additional area on private land.

(2) *Comment:* A peer reviewer recommended we expand the Maricao Unit because they believed habitat with physical and biological features on private lands outside the western boundary of the MCF was left out of the critical habitat designation. The reviewer recommended designating active and abandoned shade-grown coffee plantations, agricultural lands with native forest cover, and closed canopies that exist in the mountainsides parallel to road PR#105 up to km 12.4, as critical habitat. The reviewer stated that this area encompasses suitable habitat consistently used and occupied by the elfin-woods warbler.

Our Response: We reanalyzed the lands adjacent to the western boundary of the MCF. As described in our response to comment 1, we identified an additional 8 ac (3.2 ha) of private land adjacent to the MCF that is occupied and contains the physical and biological features required by the elfin-woods warbler that we are including as critical habitat. We determined the remainder of these private areas suggested by the peer reviewer are disturbed and do not fit our established criteria for critical habitat at this time (see *Criteria Used To Identify Critical Habitat*). Because these areas are occupied, the species is protected in these areas. For example, where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. Additionally, the prohibitions of section 9 of the Act apply to the elfin-woods warblers that occur within these areas.

(3) *Comment:* A peer reviewer recommended we include Guilarte Commonwealth Forest as another area outside the geographic range of the

elfin-woods warbler at the time of listing to be included as critical habitat, based on the potential of this forest to provide connectivity between occupied sites for genetic exchange and because it contains the necessary habitat to support the species.

Our Response: Based on the best available information at this time, we do not consider the Guilarte Commonwealth Forest (GCF) essential to the conservation of the species. The elfin-woods warbler has never been observed in the GCF, indicating the GCF may not be essential habitat for the species. In addition, occupancy of resilient populations of the elfin-woods warbler in the three areas that constitute its known historical range, which we are designating as critical habitat, would likely be sufficient to ensure conservation of the species. A critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be beneficial for the recovery of the species. The Service can develop recovery actions during recovery planning for this site. We will continue working with our State partners to address the conservation needs of the elfin-woods warbler.

Comments From States

Section 4(b)(5)(A)(ii) of the Act requires the Service to give actual notice of any designation of lands that are considered to be critical habitat to the appropriate agency of each State in which the species is believed to occur, and invite each such agency to comment on the proposed regulation. Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' For this rule we did not receive any written comments from the Commonwealth of Puerto Rico.

Public Comments

We received one public comment on the proposed rule. While the commenter indicated support for the habitat protection of the elfin-woods warbler, the commenter did not provide substantive comments requiring the Service's response.

Summary of Changes From Proposed Rule

This final rule incorporates changes to our proposed rule based on the comments and information we received, as discussed above in the Summary of Comments and Recommendations. All changes made were included accordingly into the document, tables, and maps. As a result, the final designation of critical habitat reflects the following changes from the June 22, 2016, proposed rule (81 FR 40632):

1. We revised Unit 1 (Maricao) to include additional area as critical habitat. This unit now consists of approximately 12,978 ac (5,252 ha), which is an increase of approximately 2.8 percent of the proposed area for Unit 1.

2. We corrected an error in the acreage of Unit 3 (Carite). The error resulted from rounding of numbers (rounding up from 0.55), and the change was an increase of approximately 1.1 ac (0.45 ha).

3. We refined our description of the physical and biological features to be more explicit about the features we are identifying, specifying these features include elevations above 300 meters in active shade-grown coffee plantations or forested agricultural lands dominated primarily by native vegetation, or abandoned coffee plantations or agricultural lands with native forest cover and a closed canopy. In the proposed rule, we did not specify the elevations in these landscapes. No adjustments to the unit boundaries were needed as a result of this change.

4. We updated the coordinates or plot points from which the maps were generated. The information is available at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030, and from the Caribbean Ecological Services Field Office website at *http://www.fws.gov/caribbean.*

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we may designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

For the elfin-woods warbler, we determined whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. Our decision was further informed by observations of species-habitat relationships, habitat suitability models derived from these observations, and the locations of historical records to identify which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The elfin-woods warbler is an endemic Puerto Rican bird with a very limited distribution. It is typically observed in forested habitats with closed canopy and well-developed understory in higher elevations. Based on the best available information, there are only two known elfin-woods warbler populations, one each in eastern and western Puerto Rico.

The eastern population occurs at El Yunque National Forest (EYNF) located within the Sierra de Luquillo mountains. The species' primary habitat in EYNF consists of the dwarf forest (Kepler and Parkes 1972, pp. 3–5) and the Palo Colorado forest (Wiley and Bauer 1985, pp. 12–18). The dwarf forest falls within the lower montane rain forest life zone (Ewel and Whitmore 1973, p. 49). It is found on exposed peaks with short, stunted vegetation above 900 meters (m) (2,952 feet (ft)) in elevation (Weaver 2012, p. 58). The dwarf forest is characterized by a single story of trees that range from 1 to 6 m (3 to 19 ft) in height, depending on exposure (Weaver 2012, p. 58). However, trees located on rocky summits are limited to 2 to 3 m (6 to 10 ft) in height. Although no tree species is confined to this type of forest, only a few species, such as *Podocarpus coriaceus* (no common name, referred to as ''Podocarpus''), *Ocotea spathulata* (nemocá), and *Ilex sintenisii* (no common name), are adapted to survive on the exposed summits of this forest (Weaver 2012, p. 58). The dwarf forest is also characterized by the abundance of mosses, epiphytes, and liverworts that cover the majority of the forest surface (Lugo 2005, p. 514).

The Palo Colorado forest occurs on gentle slopes within the lower montane wet and lower montane rain forest life zones, approximately between 600 and 900 m (1,968 and 2,952 ft) in elevation (Weaver 2012, p. 1; U.S. Forest Service (USFS) no date). This forest type mainly consists of fast-growing trees with heights not exceeding more than 24 m (78 ft) (Lugo 2005, p. 506). This forest type is essentially an upland swamp of short-statured trees with shallow root systems (USFS, no date). Some of the most common tree species are *Cyrilla racemiflora* (Palo Colorado), *Prestoea montana* (Sierra palm), *Ocotea spathulata,* and *Croton poecilanthus* (sabinón) (Weaver 2012, p. 55). The understory of the Palo Colorado forest is dominated by grasses, bromeliads, ferns, and sedges (Lugo 2005, p. 508).

The western population of the elfin-woods warbler is located within the MCF and adjacent agricultural lands. The MCF is located within the Cordillera Central (central mountain range) of Puerto Rico. The primary habitat of the western population consists of Podocarpus forest, exposed ridge woodland, and timber plantation forests (González 2008, pp. 15–16). The Podocarpus forest is located on the slopes and highest peaks (600 to 900 m (1,968 to 2,952 ft)) within the lower montane wet forest life zone (DNR 1976, p. 185; Ewel and Whitmore 1973, p. 41). At the MCF, this type of forest grows on deep serpentine soils and is dominated by *Podocarpus coriaceus* trees; a continuous closed canopy of approximately 20 m (66 ft) of height; and a well-developed understory composed of tree ferns (*Cyathea* spp.), Sierra palm, and vines (Tossas and Delannoy 2001, pp. 47–53; Anadón-Irizarry 2006, p. 53; González 2008, pp. 15–16). The exposed ridge woodland forest is found in valleys, slopes, and shallow soils with a more or less continuous canopy (González 2008, pp. 15–16). These forest associations are found at elevations ranging from 550 to 750 m (1,804 to 2,460 ft) within the subtropical wet forest life zone (DNR 1976, p. 185; Ricart-Pujals and Padrón-Vélez 2010, p. 9). The timber plantation forest is found in elevations ranging from 630 to 850 m (2,066 to 2,788 ft) within the subtropical wet forest and the subtropical moist forest life zones (DNR 1976, p. 185). Habitat in this forest is predominantly *Calophyllum calaba* (María trees), *Eucalyptus robusta* (eucalyptus), and *Pinus caribaea* (Honduran pine) planted in areas that were deforested for agriculture (Delannoy 2007, p. 9; González 2008, p. 5).

In the privately owned lands adjacent to the MCF, the species has been reported mainly within secondary forests (both young and mature secondary forests) and shade-grown coffee plantations (González 2008, pp. 15–16). The young secondary forests are less than 25 years old with a mostly open canopy approximately 12 to 15 m (40 to 50 ft) in height (González 2008, p. 6). These forests are found within the subtropical moist and subtropical wet forest life zones at elevations ranging from 300 to 750 m (984 to 2,460 ft) (González 2008, p. 59; Puerto Rico Planning Board 2015, no page number), and cover approximately 98 percent of the MCF (DNR 1976, p. 185). The understory is well developed and dominated by grasses, vines, and other early successional species (González 2008, p. 6). Mature secondary forests are over 25 years old, developing in humid and very humid, moderate to steep slopes. These forests are characterized by a closed canopy of approximately 20 to 30 m (66 to 100 ft) in height and sparse to abundant understory (González 2008, p. 6). The shade-grown coffee plantations are covered with tall mature trees, dominated mostly by *Inga vera* (guaba), *Inga laurina* (guamá), *Andira inermis* (moca), and *Guarea guidonia* (guaraguao) trees, reaching 15 to 20 m (50 to 66 ft) in height, with an open understory without grasses (González 2008, p. 6). Located adjacent to the MCF at elevations between 300 and 600 m (984 and 1,968 ft), these shade-grown coffee plantations extend the vegetation cover and provide habitat for the species (González 2008, p. 59).

According to the habitat suitability model developed for the species, all the habitats described above occur within the intermediate to very high adequacy category (Colón-Merced 2013, p. 57). This model is based on a combination of elevation and vegetation cover in areas where the species is known to occur. In addition, the species appears to be associated with high elevations and is seldom observed in elevations lower than 300 m (984 ft). The habitat types identified above are the only habitats that the species is known to occupy and use for normal behavior that support its life-history processes. Thus, protection and maintenance of these forested habitat features are essential for rearing, growth, foraging, migration, and other normal behaviors of the species.

Limited information is available concerning the elfin-woods warbler's breeding, reproduction, and offspring development. However, based on the best available information, shaded and forested corridors are features that are essential to breeding, reproduction, and rearing. The elfin-woods warbler's breeding occurs between March and June (Raffaele et al. 1998, p. 406). Clutch size is usually two to three eggs, but there have been observations of nests that contain broods of up to four nestlings (Raffaele et al. 1998, p. 406; Rodríguez-Mojica 2004, p. 22). The species' nest is described as a compact cup, usually close to the trunk and well hidden among epiphytes of small trees (Raffaele et al. 1998, p. 406). The first elfin-woods warbler nest was found in 1985 at EYNF (Arroyo-Vázquez 1992, p. 362), and later, two nests were found in the MCF area (Arryo-Vázquez 1992, p. 362). Both nests in the MCF were in Podocarpus forest, placed in trees among dry leaf litter trapped in vegetation or vines at heights between 1.3 and 7.6 m (4.3 and 25.0 ft) (Arroyo-Vázquez 1992, pp. 362–364). In 2004, the first nesting event in a cavity of a rotten *Cyrilla racemiflora* stump in the MCF area was reported (Rodríguez-Mojica 2004, p. 22). The nest was placed about 7 m (23 ft) above ground and 6 centimeters (cm) (2 inches (in)) deep from the lower border of the irregular rim of the stump. No other warbler species in Puerto Rico have been reported using such a nesting site (Rodríguez-Mojica 2004, p. 23).

Based on the available information describing the habitat used by the elfin-woods warbler, we identified the dwarf, Palo Colorado, *Podocarpus,* exposed ridge woodland, and timber plantation forests and forest associations (shaded and forested corridors); secondary forests; and shade-grown coffee plantations. These habitats contain physical or biological features that are essential to the conservation of the elfin-woods warbler because they provide space for population growth and normal behavior; cover and shelter; and sites for breeding, rearing, and development of offspring.

Summary of Essential Physical or Biological Features

We derived the specific physical or biological features (PBFs) essential to the conservation of the elfin-woods warbler from studies of this species' habitat, ecology, and life history as described above. Additional information can be found in the final listing rule published in the **Federal Register** on June 22, 2016 (81 FR 45035), and in our proposed critical habitat designation, which also published in the **Federal Register** on June 22, 2016 (81 FR 40632). We have determined that the following PBFs are essential to the conservation of elfin-woods warbler:

1. Wet and rain montane forest types:

a. *Podocarpus* forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with continuous closed canopy of 20 m (66 ft) in height, dominated by *Podocarpus coriaceus* trees with well-developed understory.

b. Dwarf forest at elevations above 900 m (2,952 ft) with a single story of trees between 1 and 6 m (3 and 19 ft) in height, with an understory of mosses, epiphytes, and liverworts.

c. Palo Colorado forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with a closed canopy of approximately 20 m (66 ft) and an understory dominated by grasses, ferns, bromeliads, and sedges.

2. Forested habitat areas that contain:

a. Active shade-grown coffee plantations or forested agricultural lands that are above 300 m in elevation and are dominated primarily by native vegetation; or

b. Abandoned coffee plantations or agricultural lands (*i.e.,* agricultural practices were discontinued) with native forest cover and a closed canopy found above 300 m in elevation.

3. Forested habitat (at elevations between 300 and 850 m (984 and 2,788 ft)) not contained within the habitats described in PBF 1 or PBF 2:

a. Exposed ridge woodland forest found in valleys, slopes, and shallow soils with a more or less continuous canopy at elevations ranging from 550 to 750 m (1,804 to 2,460 ft);

b. Timber plantation forest at elevations ranging from 630 to 850 m (2,066 to 2,788 ft); or

c. Secondary forests dominated by native tree species with a closed canopy of approximately 20–30 m (66–100 ft) in height at elevations ranging from 300 to 750 m (984 to 2,460 ft).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and may require special management considerations or protection.

The Maricao unit contains privately owned agricultural lands in which various activities may affect one or more of the PBFs. The features of this unit essential to the conservation of the elfin-woods warbler may require special management considerations or protection to reduce the following threats: Loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices; hurricanes; and human-induced fires. The features of the El Yunque unit may require special management considerations or protection to reduce threats or potential threats from hurricanes and human-induced fires, which may be exacerbated by the effects of climate change.

Management activities that could ameliorate these threats or potential threats include but are not limited to the following: The 2014 candidate conservation agreement (CCA) signed by the Service, U.S. Forest Service, and Puerto Rico Department of Natural and Environmental Resources (PRDNER) to implement conservation practices for the benefit of the elfin-woods warbler and its habitat in EYNF and MCF (USFWS 2014); implementation of conservation agreements with private landowners to restore habitat and minimize habitat disturbance and fragmentation; and development and implementation of management plans for other protected lands where the species is found.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

Because of the vulnerability associated with small populations, limited distributions, or both (as described in the final listing rule), conservation of the elfin-woods warbler requires protection of both existing occupied habitat and potential habitat (*i.e.,* suitable for occupancy but currently unoccupied), and the establishment of new populations to reduce or eliminate such vulnerability. In this case, we considered potential habitat to be historically occupied areas that currently possess the PBFs suitable for elfin-woods warbler recolonization and subsequent persistence. Therefore, for the elfin-woods warbler, in addition to areas occupied by the species at the time of listing, we are designating habitat outside the geographical area occupied by the species at the time of listing (Unit 3, Carite), which was historically occupied but is presently unoccupied, because it is essential for the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Sources of data for this critical habitat designation include reports on assessments and surveys throughout the species' range, peer-reviewed scientific and academic literature, habitat suitability models, personal communications with the species experts (*e.g.,* Colón-Merced 2013; González 2008; Anadón-Irizarry 2006; Delannoy 2007; Arroyo-Vázquez 1992; Pérez-Rivera 2014, pers. comm.); and information from Service biologists. Other sources include databases maintained by Commonwealth and Federal agencies regarding Puerto Rico (such as elevation data, land cover data, aerial imagery, protected areas, and U.S. Geological Survey (USGS) topographic maps). Critical habitat units were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a geographic information system (GIS) program.

To further refine the critical habitat boundaries, we used an existing elfin-woods warbler habitat suitability model (Colón-Merced 2013, p. 51). This model uses variables such as elevation and vegetation cover to predict suitable habitat for this species in Puerto Rico (Colón-Merced 2013, p. 45). This model has been validated in several locations in Puerto Rico (Anadón-Irizarry 2017, pp. 7–10; Anadón-Irizarry et al. 2017, entire).

In order to identify essential features within private lands adjacent to the MCF, we established a buffer zone of 500 m (0.31 mile (mi)) from the boundary line of the MCF to include forested areas in abandoned and active shade-grown coffee plantations where the elfin-woods warbler has been reported on the north, east, and west sides of the forest (González 2008, p. 59). We used 500 m (0.31 mi) as our buffer zone, because our best understanding of the available information (*e.g.,* spatial data and on-the-ground data) is that this area encompasses suitable habitat that supports the conservation of the elfin-woods warbler.

Areas Occupied at the Time of Listing

The final critical habitat designation focuses on occupied forested areas within the species' historical range containing the PBFs that will allow for the maintenance and expansion of existing populations and for possible new populations. Two locations meet the definition of geographic areas occupied by the species at the time of listing: (1) EYNF, and (2) MCF and adjacent private lands to the north, east, and west.

Areas Outside the Geographical Area Occupied at the Time of Listing

To consider for designation areas not occupied by the species at the time of the listing, we must demonstrate that these areas are essential for the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species. To determine if these areas are essential for the conservation of the elfin-woods warbler, we considered the life history, status, habitat elements, and conservation needs of the species such as:

(1) The importance of the area to the overall status of the species to prevent extinction and contribute to the species' conservation;

(2) Whether the area contains the necessary habitat to support the species;

(3) Whether the area provides connectivity between occupied sites for genetic exchange; and

(4) Whether a population of the species could be reestablished in the area.

The Carite Commonwealth Forest (CCF) is within the historical range of the elfin-woods warbler, within the Sierra de Cayey mountains in southeast Puerto Rico (Silander et al. 1986, p. 178); the Sierra de Cayey mountains are connected to the Cordillera Central mountains, which extend from Aibonito in the east to Maricao in the west of Puerto Rico (Monroe 1980, p. 16). However, the species has not been reported in CCF since 2000 (Anadón-Irizarry 2006, p. 34; Pérez-Rivera 2014, pers. comm.; Aide and Campos 2016, entire).

The CCF has been managed for conservation by the PRDNER since 1975 (previously Department of Natural Resources (DNR); DNR 1976, p. 169). This forest covers about 6,660 ac (2,695 ha), and ranges between 820 and 2,962 ft (250 and 903 m) in elevation (DNR 1976, p. 168). The mean annual precipitation is 225 cm (88.5 in), and the mean temperature is 72.3 degrees Fahrenheit (°F) (22.7 degrees Celsius (°C)) (DNR 1976, p. 169; Silander et al. 1986, p. 183).

The CCF contains the following forest types, which contain the PBFs for the elfin-woods warbler: Dwarf forest, Palo Colorado forest, timber plantation forest, and secondary forests. These are the same forest types used by the elfin-woods warbler in EYNF and MCF and are located within the same life zones in CCF as they are in EYNF and MCF (Ewel and Whitmore 1973, p. 74).

Although studies conducted by Anadón-Irizarry (2006, 2014) between 2003–2004 and 2012–2013 failed to detect the species within the CCF, she suggested the possibility that the species may still be present in isolated pockets of forest that were not searched during those studies. The elfin-woods warbler may be difficult to detect owing to its persistent and relatively sedentary behavior and because it has an affinity for certain small and isolated pockets of forest (Anadón-Irizarry 2006, p. 54; Delannoy 2007, pp. 22–23; Pérez-Rivera 2014, pers. comm.). However, surveys contracted by the Service and conducted between March and April 2016 did not detect the species within the CCF and adjacent private lands (Aide and Campos 2016, entire). In any case, the CCF contains habitat that is likely suitable for the elfin-woods warbler due to its similarity in elevation, climatic conditions, and vegetation associations with EYNF and MCF (Colón-Merced 2013, p. 57). This area contains habitat with ''intermediate to very high adequacy'' (favorable to optimal combination of elevation and vegetation cover in the known elfin-woods warbler habitat) according to the habitat suitability model for the species (Colón-Merced 2013, p. 57).

The CCF provides the necessary habitat to support the elfin-woods warbler in the easternmost part of the Cordillera Central. The presence of suitable habitat characteristics and historic occurrence of the species within the CCF increases the opportunity for future reestablishment of a population of elfin-woods warblers in this forest. In addition, the connectivity between MCF and CCF through the Cordillera Central is expected to result in genetic exchange between the existing MCF populations and CCF populations that may be reestablished in the future. While there is connectivity between MCF and CCF, the EYNF is within the Sierra de Luquillo mountains with lower elevation and development between the mountain ranges that significantly reduces connectivity between CCF and EYNF. For the above-mentioned reasons, we conclude that suitable habitat within the CCF meets the four considerations described above, and is therefore essential for the conservation of the elfin-woods warbler.

General Information on the Maps of the Critical Habitat Designation

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for elfin-woods warbler. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat in areas that we have determined were occupied at the time of listing in 2016 and contain physical or biological features to support life-history processes essential to the conservation of the species. We are also designating specific areas within one unit outside of the geographical area occupied by the species at the time of listing, which were historically occupied but are presently unoccupied, because we have determined that such areas are essential for the conservation of elfin-woods warbler and that the area contains one or more of those physical or biological features essential to the conservation of the warbler.

All units were designated based on one or more of the elements of physical or biological features being present to support elfin-woods warbler's life processes. Some units contained all of the identified elements of physical or biological features and supported multiple life processes. Some units contained only some elements of the physical or biological features necessary to support the elfin-woods warbler's particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation

Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030 and at *http://www.fws.gov/caribbean.*

Final Critical Habitat Designation

We are designating approximately 27,488 acres (11,125 hectares) in three units as critical habitat for elfin-woods warbler. The critical habitat areas described below constitute our best assessment of areas that meet the definition of critical habitat for the elfin-woods warbler. Those three units are: (1) Maricao, (2) El Yunque, and (3) Carite. Table 1 shows the name, occupancy of the unit, municipality, land ownership, and approximate area of the designated critical habitat units for the elfin-woods warbler.

TABLE 1—LOCATION, OCCUPANCY STATUS, OWNERSHIP, AND SIZE OF ELFIN-WOODS WARBLER CRITICAL HABITAT UNITS

Unit	Occupied	Municipality	Land ownership in acres (hectares)			Total area in acres (hectares)
			Federal	Commonwealth	Private	
1: Maricao	Yes	Maricao, San German, Sabana Grande, Yauco.	0	8,861 (3,586)	4,117 (1,666)	12,978 (5,252)
2: El Yunque	Yes	Río Grande, Canovanas, Las Piedras, Naguabo, Ceiba.	11,430 (4,626)	0	0	11,430 (4,626)
3: Carite	No	Cayey, San Lorenzo, Guayama, Patillas.	0	3,080 (1,247)	0	3,080 (1,247)
Totals			11,430 (4,626)	11,941 (4,833)	4,117 (1,666)	27,488 (11,125)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for elfin-woods warbler, below.

Unit 1: Maricao

Unit 1 consists of 12,978 ac (5,252 ha). Approximately 8,861 ac (3,586 ha) are owned by the Commonwealth and managed by the PRDNER, and 4,117 ac (1,666 ha) are in private ownership. This unit is located within the municipalities of Maricao, San Germán, Sabana Grande, and Yauco and encompasses the majority of the Maricao Commonwealth Forest. The unit is located north of State Road PR–2, south of State Road PR–105, and approximately 65 miles (mi) (105 kilometers (km)) west of the International Airport Luis Muñoz Marin. This unit is within the geographical area occupied by the elfin-woods warbler at the time of listing. This unit contains all the PBFs and a core population of the species, and will likely contribute to range expansion of the elfin-woods warbler by serving as a source of birds to found elfin-woods warbler populations in Carite, which is currently unoccupied but contains the PBFs.

The PBFs in this unit may require special considerations or protection to address the following threats or potential threats that may result in changes in the composition or abundance of vegetation within this unit: Loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices; hurricanes; and human-induced fires.

Unit 2: El Yunque

Unit 2 consists of 11,430 ac (4,626 ha) of federally owned land managed by the U.S. Forest Service (EYNF). It is located within the municipalities of Río Grande, Canovanas, Las Piedras, Naguabo, and Ceiba. The unit is located east of State Road PR–186, north of State Road PR–31, and approximately 15 mi (24 km) east of the International Airport Luis Muñoz Marin. This unit is within the geographical area occupied by the elfin-woods warbler at the time of listing and contains PBFs 1(b) and 1(c) (see Physical or Biological Features Essential to the Conservation of the Species, above). This unit represents a core population of the species and helps to maintain the elfin-woods warbler's geographical range.

The PBFs in this unit may require special considerations or protection to reduce threats or potential threats from hurricanes and human-induced fires, which may be exacerbated by the effects of climate change.

Unit 3: Carite

Unit 3 consists of 3,080 ac (1,247 ha) of lands owned by the Commonwealth and managed by the PRDNER. It is located within the municipalities of Cayey, San Lorenzo, Guayama, and Patillas. The unit is located within the CCF west of State Road PR–7740 and State Road PR–184 that runs within the CCF, and approximately 23 mi (37 km) south of the International Airport Luis Muñoz Marin. This unit was not occupied by the elfin-woods warbler at the time of listing and is considered to be essential for the conservation of the species. As discussed above (see Criteria Used to Identify Critical Habitat), this unit currently has the habitat features, including all of the PBFs, to support the elfin-woods warbler. Therefore, this unit provides an opportunity for expansion of the species' documented current range into an area that was previously occupied; this potential expansion will help to increase the redundancy and resiliency of the species. Therefore, we conclude that this unit is essential for the conservation of the elfin-woods warbler.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would significantly alter the structure and function of active shade-grown coffee plantations, abandoned coffee plantations, and/or agricultural lands with native forest cover and a closed canopy. These actions or activities may include, but are not limited to, deforestation, conversion of shade-grown coffee to sun-grown coffee plantations, and unsustainable agricultural practices (*i.e.,* agricultural and silvicultural practices other than sun-to-shade-grown coffee conversion, and herbicide and pesticide use outside coffee plantations). These actions could degrade the habitat used by the elfin-woods warbler for feeding, reproducing, and sheltering.

(2) Actions that would significantly alter the vegetation structure in and around the *Podocarpus,* dwarf, or Palo Colorado forests and forest associations. These actions or activities may include, but are not limited to, habitat modification (*e.g.,* deforestation, fragmentation, loss, introduction of nonnative species, expansion or construction of communication facilities, expansion of recreational facilities, pipeline construction, bridge construction, road rehabilitation and maintenance, habitat management), Federal and State trust species reintroductions, trail maintenance, camping area maintenance, research, repair and restoration of landslides, and any other activities that are not conducted in accordance with the consultation and planning requirements for listed species under section 7 of the Act. These activities could alter the habitat structure essential to the elfin-woods warbler and may create suitable conditions for other species that compete with or prey upon the elfin-woods warbler or displace the species from its habitat.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security, or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the elfin-woods warbler (Abt Associates, Inc. 2016). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and thus may require additional management or conservation efforts as a result of the critical habitat designation for the species; these additional efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the elfin-woods warbler; our DEA is summarized in the narrative below. The DEA, dated March 7, 2016, was made available for public review from June 23, 2016, through August 22, 2016 (81 FR 40632). We did not receive any public comments on the DEA. A copy of the DEA may be obtained by contacting the Caribbean Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at *http://www.regulations.gov.*

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the elfin-woods warbler, first we identified, in the IEM dated December 7, 2015, probable incremental economic impacts associated with the following categories of activities: Forest management, silviculture/timber management, implementation of conservation/restoration practices, human-induced fire management, development or improvement of existing infrastructure (*e.g.,* roads, water intakes, water pipelines, electric transmission lines), recreation facilities, agriculture, and single house development funded by the U.S. Department of Housing and Urban Development (HUD). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the elfin-woods warbler is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. When this final critical habitat designation rule becomes effective, consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the elfin-woods warbler's critical habitat. Because the majority of the critical habitat units are already managed for the conservation of natural resources, all units have co-occurring federally listed species, and two of the three units are occupied by the elfin-woods warbler, it is unlikely that costs will result from section 7 consultations considering critical habitat alone, consultations resulting in adverse modifications alone, or project modifications attributable to critical habitat alone. The only incremental costs predicted are the administrative costs due to additional consideration of adverse modification of critical habitat during section 7 consultations.

Based on estimates from existing section 7 consultations on a surrogate listed species, the Puerto Rican sharp-shinned hawk, the DEA predicts that 5.4 requests for technical assistance, 2.4 informal consultations, and 0.6 formal consultations per year will consider critical habitat for the elfin-woods warbler. The 363 ac (146.9 ha) we are including in Unit 1 of our critical habitat designation, after the proposed designation and DEA were complete, does not significantly alter the economic predictions. Within this 363 ac, there have been no consultations and one species list request in the past 5 years.

In addition, because there are other federally listed species in all units of the critical habitat for elfin-woods warbler, the Service finds that the designation of critical habitat for the elfin-woods warbler is unlikely to lead to changes in permitting processes by Commonwealth or local agencies or other land managers.

We note that ''any project modifications or conservation measures recommended to prevent adverse modification of the elfin-woods warbler's critical habitat will not differ from project modifications and conservation measures recommended to prevent the jeopardy of other federally listed co-occurring species in the area (*e.g.,* Puerto Rican sharp-shinned hawk)'' (Abt Associates, Incorporated 2016, p. 11). Federally listed species occupy areas in the three critical habitat units for the elfin-woods warbler. Therefore, we do not expect substantial impacts within any geographic area or to any sector as a result of this critical habitat designation.

Based on peer review comments that identified an area that is occupied by the species and has the PBFs that support the species, we added 363 ac (146.9 ha) to proposed critical habitat in Unit 1 (Maricao). This added area consists of 355 ac within lands managed for conservation by the Puerto Rico Department of Natural and Environmental Resources, with the remaining 8 ac privately owned. The incremental economic effects of this addition are minimal, because the area being added is 1.3 percent of the total critical habitat, predominantly contains lands managed for conservation, and harbors federally listed species covered under section 7 of the Act.

Based on the finding that the critical habitat designation will have minimal impact on land use or other activities (*i.e.,* there is little incremental difference due to the designation), the DEA concludes that benefits will also be minimal. Possible benefits, aside from the conservation of elfin-woods warbler, could include cultural heritage benefits and other non-use benefits. Due to limited data availability, however, the DEA does not monetize these benefits.

Exclusions Based on Economic Impacts

The first sentence of section 4(b)(2) of the Act requires the Service to consider the economic impacts (as well as the impacts on national security and any other relevant impacts) of designating critical habitat. In addition, economic impacts may, for some particular areas, play an important role in the discretionary section 4(b)(2) exclusion analysis under the second sentence of section 4(b)(2). In both contexts, the Service has considered the probable incremental economic impacts of the designation. When the Service undertakes a discretionary section 4(b)(2) exclusion analysis with respect to a particular area, we weigh the economic benefits of exclusion (and any other benefits of exclusion) against any benefits of inclusion (primarily the conservation value of designating the area). The conservation value may be influenced by the level of effort needed to manage degraded habitat to the point where it could support the listed species.

The Service uses its discretion in determining how to weigh probable incremental economic impacts against conservation value. The nature of the probable incremental economic impacts, and not necessarily a particular threshold level, triggers considerations of exclusions based on probable incremental economic impacts. For example, if an economic analysis indicates high probable incremental impacts of designating a particular critical habitat unit of lower conservation value (relative to the remainder of the designation), the Service may consider exclusion of that particular unit.

As discussed above, the Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising his discretion to exclude any areas from this designation of critical habitat for the elfin-woods warbler based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. We have determined that the lands within the final designation of critical habitat for the elfin-woods warbler are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that some areas within the final designation are included in management plans or other conservation agreements such as the Service's Wildlife Conservation Extension Agreements with private landowners, Natural Resources Conservation Service's conservation contracts with private landowners, cooperative agreements with nongovernmental organizations (NGOs), and the CCA signed at the end of 2014 among the Service, U.S. Forest Service, and PRDNER to implement conservation practices for the recovery of the elfin-woods warbler within EYNF and MCF.

Although the initiatives with private landowners and NGOs promote the restoration and enhancement of elfin-woods warbler habitat adjacent to the EYNF and MCF, potential challenges such as limited resources and uncertainty about landowners' participation may affect the implementation of conservation practices that mitigate impacts of agricultural practices and ensure the conservation of the species' essential habitat. We do not anticipate any negative effects of designating critical habitat in areas where existing partnerships occur. Further, there are no tribal lands in Puerto Rico. Therefore, the Secretary is not exercising his discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has waived their review regarding their significance determination of this rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Executive Order 13771

We do not believe this rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this rule.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. Our economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with elfin-woods warbler conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the majority of the critical habitat units are already managed for natural resource conservation by the Federal government or the Commonwealth of Puerto Rico, and all critical habitat units have co-occurring federally listed species that are already being considered by the Commonwealth and municipalities for any actions proposed in the area. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for elfin-woods warbler in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for elfin-woods warbler does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the proposed critical habitat designation with, appropriate State resource agencies in Puerto Rico. We did not receive comments from Federal agencies for this rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological features essential to the conservation of the elfin-woods warbler. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As discussed above, there are no tribal lands in Puerto Rico, and therefore, we have identified no tribal interests that will be affected by this final rulemaking.

References Cited

A complete list of all references cited is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030 and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

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

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Warbler, elfin-woods (*Setophaga angelae*)'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
BIRDS				
*	*	*	*	* * *
Warbler, elfin-woods	*Setophaga angelae*	Wherever found	T	81 FR 40534, 6/22/2016; 50 CFR 17.41(e);[4d], 50 CFR 17.95(b).[CH]
*	*	*	*	* * *

■ 3. In § 17.95, amend paragraph (b) by adding an entry for ''Elfin-woods Warbler (Setophaga angelae)'', immediately following the entry for ''Least Bell's Vireo (Vireo bellii pusillus)'', to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Elfin-woods Warbler (*Setophaga angelae*)

(1) Critical habitat units are depicted for Puerto Rico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the elfin-woods warbler consist of the following components:

(i) Wet and rain montane forest types:

(A) *Podocarpus* forest at elevations between 600 and 900 meters (m) (1,968 and 2,952 feet (ft)) with continuous closed canopy of 20 m (66 ft) in height, dominated by *Podocarpus coriaceus* trees with well-developed understory.

(B) Dwarf forest at elevations above 900 m (2,952 ft) with a single story of trees between 1 and 6 m (3 and 19 ft) in height, with an understory of mosses, epiphytes, and liverworts.

(C) Palo Colorado forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with a closed canopy of approximately 20 m (66 ft) and an understory dominated by grasses, ferns, bromeliads, and sedges.

(ii) Forested habitat areas that contain:

(A) Active shade-grown coffee plantations or forested agricultural lands that are above 300 m in elevation and dominated primarily by native vegetation; or

(B) Abandoned coffee plantations or agricultural lands (*i.e.,* agricultural practices were discontinued) with native forest cover and a closed canopy found above 300 m in elevation.

(iii) Forested habitat (at elevations between 300 and 850 m (984 and 2,788 ft)) not contained within the habitats described in paragraphs (2)(i) and (ii) of this entry:

(A) Exposed ridge woodland forest found in valleys, slopes, and shallow soils with a more or less continuous canopy at elevations ranging from 550 to 750 m (1,804 to 2,460 ft);

(B) Timber plantation forest at elevations ranging from 630 to 850 m (2,066 to 2,788 ft); or

(C) Secondary forests dominated by native tree species with a closed canopy of approximately 20–30 m (66–100 ft) in height at elevations ranging from 300 to 750 m (984 to 2,460 ft).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on July 30, 2020.

(4) *Critical habitat map units.* Data layers defining map units were created by delineating habitats that contain at least one or more of the physical or biological features defined in paragraph (2) of this entry, over a U.S. Department of Agriculture 2007 digital orthophoto mosaic, over a base of U.S. Geological Survey digital topographic map quadrangle, and with the use of a digital landcover layer. The resulting critical habitat unit was then mapped using State Plane North American Datum 83 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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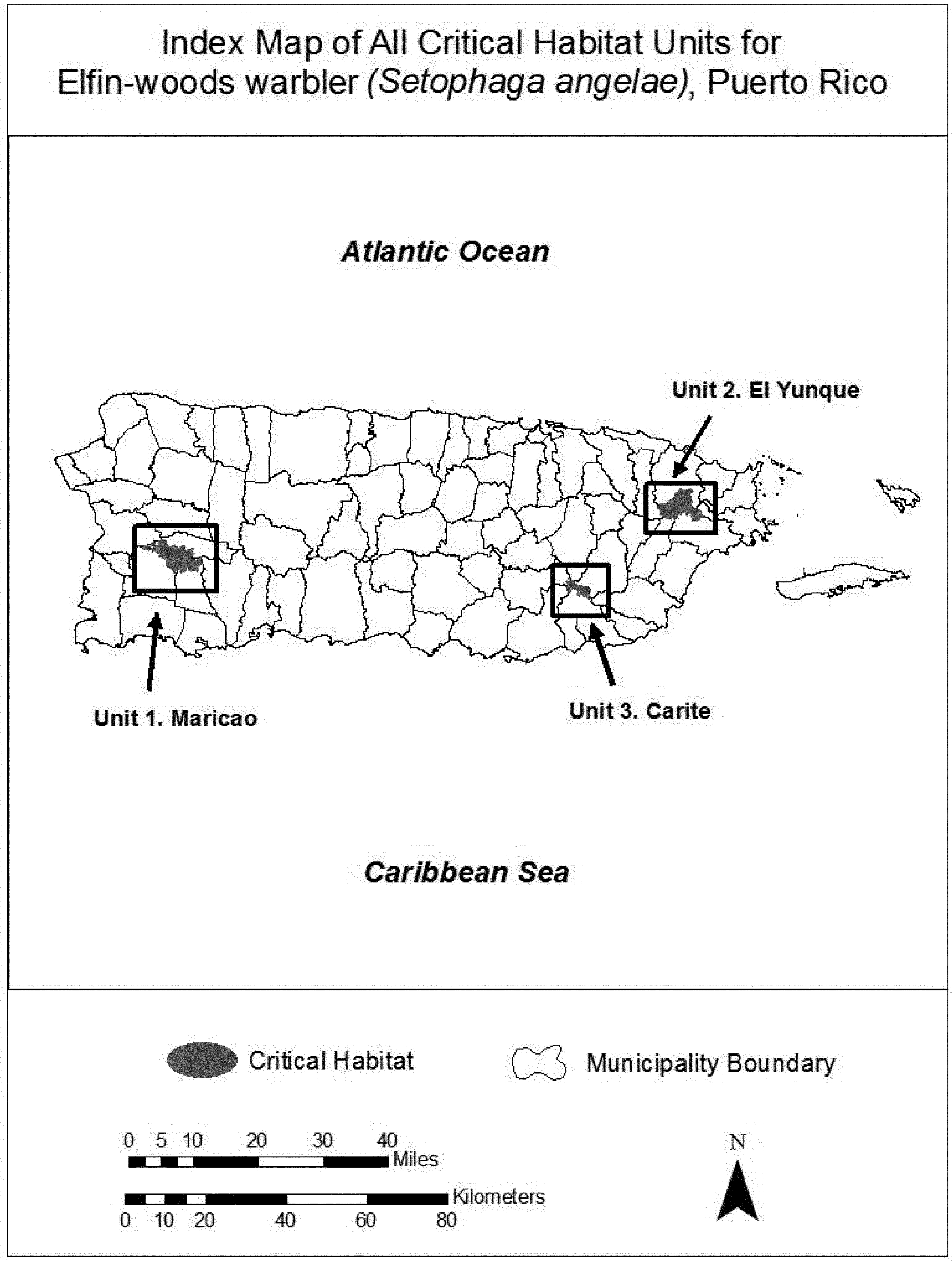
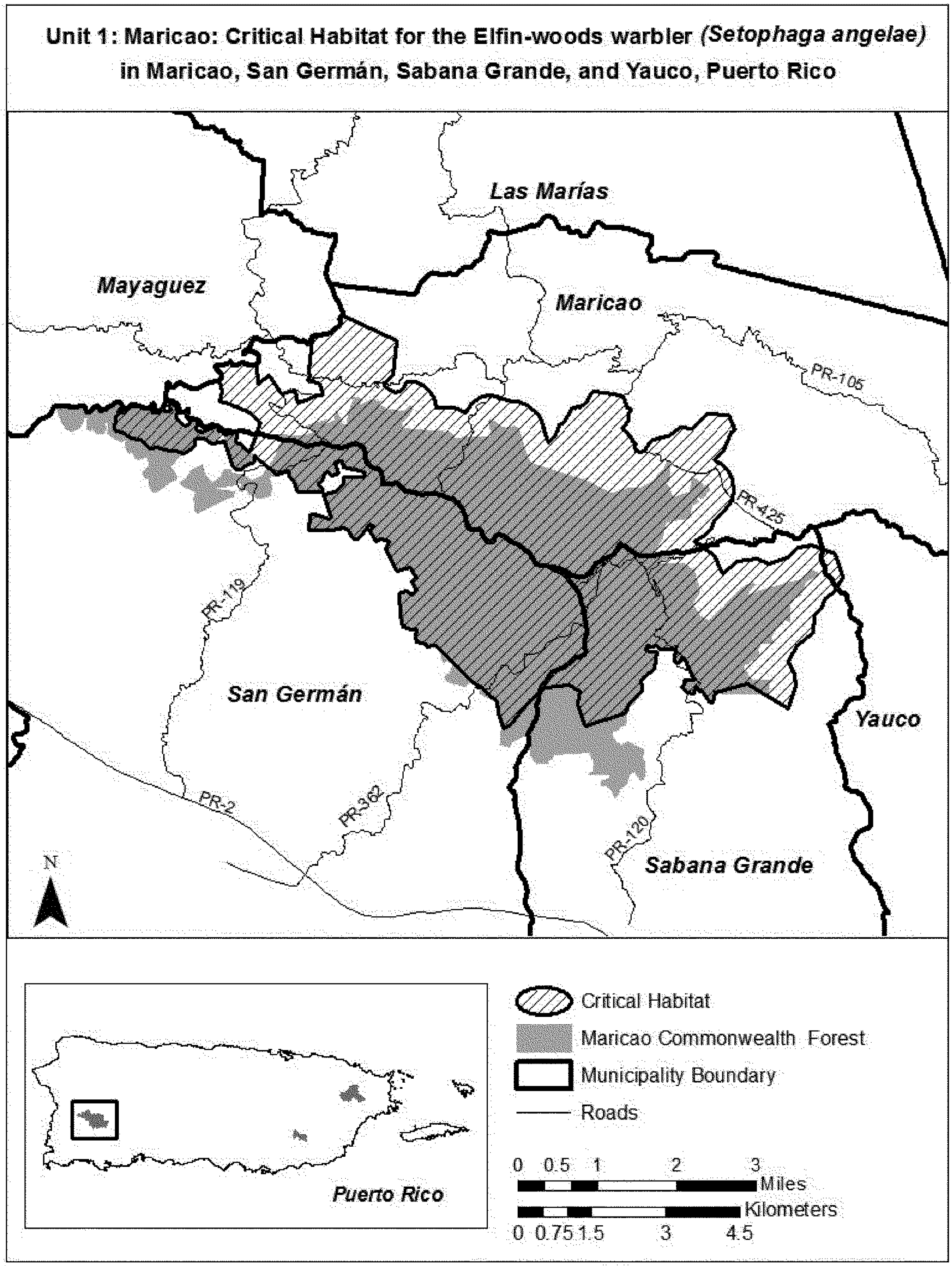


(6) Unit 1: Maricao; Maricao, San Germán, Sabana Grande, and Yauco Municipalities, Puerto Rico.

(i) *General description:* Unit 1 consists of 12,978 ac (5,252 ha). Approximately 8,861 ac (3,586 ha) are owned by the Commonwealth and managed by the Puerto Rico Department of Natural and Environmental Resources, and 4,117 ac (1,666 ha) are in private ownership. The unit is located north of State Road PR–2, south of State Road PR–105, and approximately 105 kilometers 65 mi (105 km) west of the International Airport Luis Muñoz Marin.

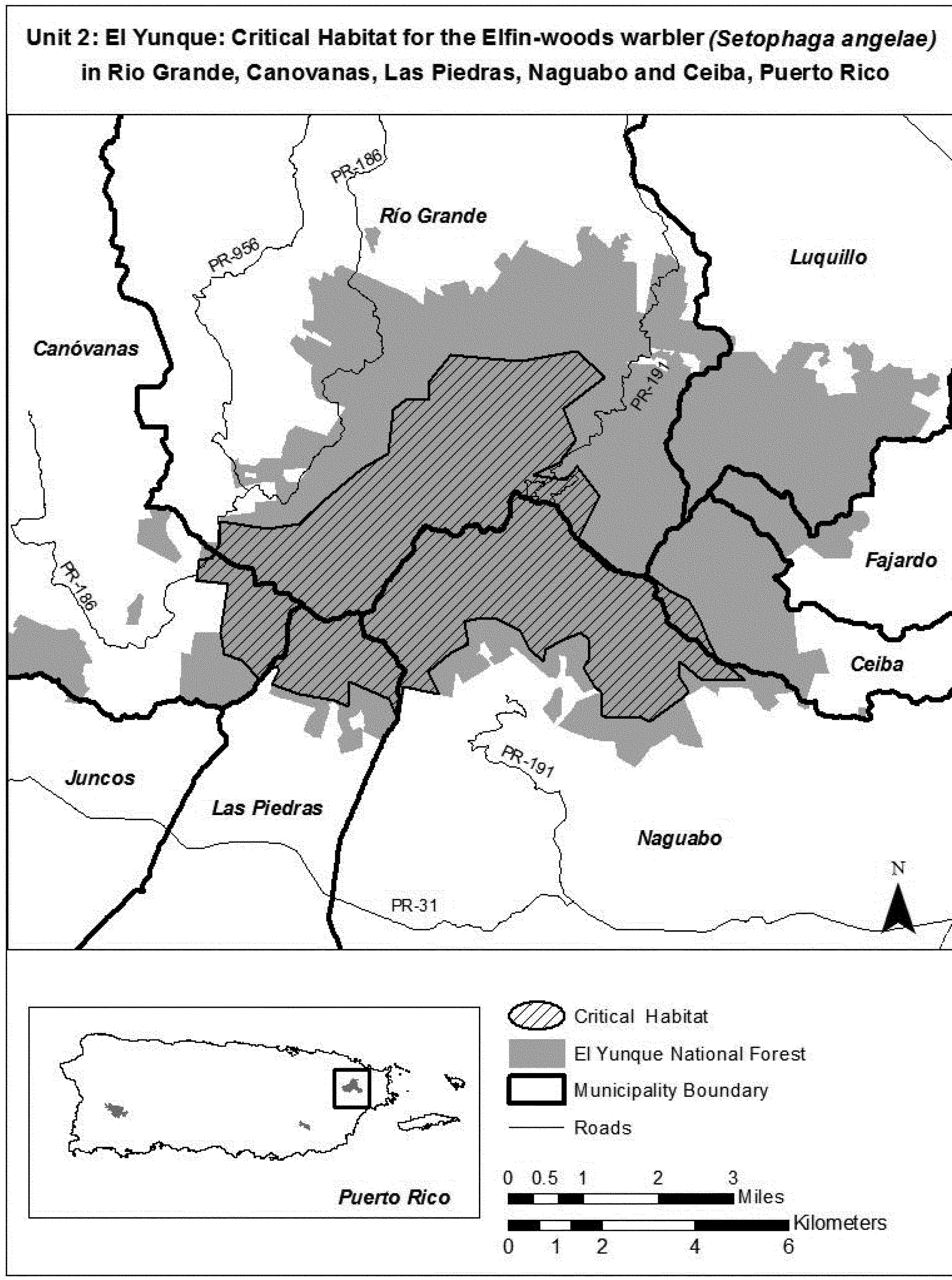
(ii) Map of Unit 1 habitat follows:



(7) Unit 2: El Yunque; Río Grande, Canovanas, Las Piedras, Naguabo, and Ceiba Municipalities, Puerto Rico.

(i) *General description:* Unit 2 consists of 11,430 ac (4,626 ha) of federally owned land managed by the U.S. Forest Service (El Yunque National Forest). The unit is located within El Yunque National Forest, east of State Road PR–186, north of State Road PR–31, and approximately 24 km (15 mi) east of the International Airport Luis Muñoz Marin.

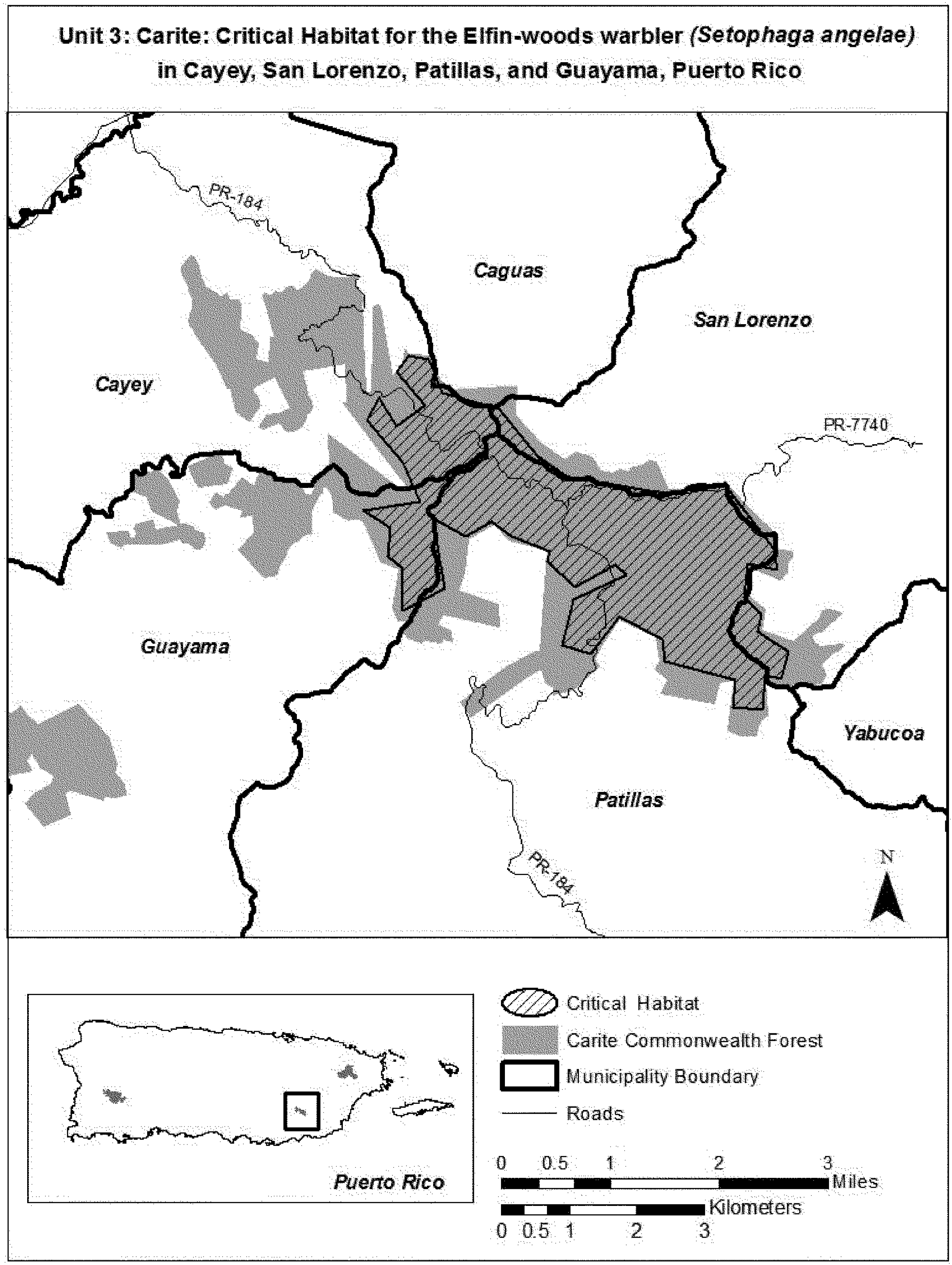
(ii) Map of Unit 2 follows:



(8) Unit 3: Carite; Cayey, San Lorenzo, Guayama, and Patillas Municipalities, Puerto Rico.

(i) *General description:* Unit 3 consists of 3,080 ac (1,247 ha) of lands owned by the Commonwealth and managed by the Puerto Rico Department of Natural and Environmental Resources. The unit is located within the Carite Commonwealth Forest west of State Road PR–7740 and State Road PR–184 that run within the Carite Commonwealth Forest, and approximately 23 mi (37 km) south of the International Airport Luis Muñoz Marin.

(ii) Map of Unit 3 follows:



* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–12070 Filed 6–29–20; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 85, No. 126
Tuesday, June 30, 2020

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2019–0202]

RIN 3150–AK39

List of Approved Spent Fuel Storage Casks: TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System Certificate of Compliance No. 1004, Renewed Amendment No. 16

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by revising the TN Americas LLC, Standardized NUHOMS® Horizontal Modular Storage System (Standardized NUHOMS® System) listing within the ''List of approved spent fuel storage casks'' to include Renewed Amendment No. 16 to Certificate of Compliance No. 1004. This amendment used a qualitative risk-informed approach (graded approach criteria) to streamline the format and content of the certificate of compliance. Renewed Amendment No. 16 does not include any design or fabrication changes to the Standardized NUHOMS® System.

DATES: Submit comments by July 30, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0202. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Norma Garcia Santos, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–6999; email: *Norma.GarciaSantos@nrc.gov* or Torre Taylor, Office of Nuclear Material Safety and Safeguards; telephone: 301–415–7900; email: *Torre.Taylor@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0202 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0202.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The Public Document Room (PDR), where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

Please include Docket ID NRC–2019–0202 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, 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 the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on September 14, 2020. However, if the NRC receives any significant adverse comments by July 30, 2020, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended, requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the Nuclear Waste Policy Act states, in part, that ''[the Commission] shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 219(a) [sic: 218(a)] for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule that added a new subpart K in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L in 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' which contains procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65898), that approved the Standardized NUHOMS® System design and added it to the list of NRC-approved cask designs provided in § 72.214 as Certificate of Compliance No. 1004.

On June 29, 2017, TN Americas LLC submitted a request to the NRC to amend Certificate of Compliance No. 1004. TN Americas LLC supplemented its request on the following dates: August 31, 2017; October 13, 2017; November 16, 2017; April 26, 2018; June 7, 2018; September 3, 2019; September 6, 2019; September 10, 2019; and September 11, 2019. Because this amendment is subsequent to TN Americas LLC's Standardized NUHOMS® System, Certificate of Compliance No. 1004 renewal, it is subject to the Aging Management Program requirements of the renewed certificate of compliance; therefore, it is referred to as ''Renewed Amendment No. 16.'' Renewed Amendment No. 16 contains no design or fabrication changes to the Standardized NUHOMS® System; rather, the applicant requested changes to the format and content of the certificate.

This amendment application was used as a pilot project to apply a qualitative risk-informed approach (using the ''graded approach criteria'') that could be used to streamline the format and content of certificates of compliance. In 2016 and 2017, the NRC coordinated with external stakeholders through a series of public workshops to explore options for achieving efficiencies through changes to the format and content of certificates of compliance. The information obtained from those workshops supported development of risk-informed graded approach criteria to streamline the format and content of a certificate of compliance for a spent fuel storage system. The graded approach criteria help determine the level of detail and location of information that should be included in a certificate of compliance for a spent fuel dry storage cask design. Chapter 2 of the preliminary safety evaluation report for this amendment discusses the development of the graded approach criteria in more detail, including information on the public meetings that were held and how the criteria were applied in review of this amendment request. The graded approach is further described in Regulatory Issue Resolution Protocol I–16–01. The NRC recently endorsed the graded approach criteria by letter to the Nuclear Energy Institute, dated January 8, 2020. For additional information about this amendment, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No., (ADAMS package accession No.), or **Federal Register** citation
Areva Inc.'s (former name of TN Americas LLC) Request to Make Changes to Certificate of Compliance 1004, Amendments 0–11 and 13; dated August 24, 2015.	(ML15239A718)
Letter from P. Triska, Areva, to the NRC; Response to Request for Additional Information; dated February 9, 2016.	(ML16054A214)
Letter from P. Triska, Areva, to the NRC; Response to Request for Additional Information; dated February 9, 2016.	(ML16054A226)

Document	ADAMS accession No., (ADAMS package accession No.), or **Federal Register** citation
Letter from R. McCullum/NEI to M. Layton/NMSS/DSFM re: Regulatory Issue Protocol Screening Form and Resolution Plan for Improving the Part 72 Regulatory Framework (RIRP–I–16–01), dated, May 12, 2017.	ML17138A119
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; letter dated June 29, 2017.	(ML17191A227)
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated August 31, 2017.	(ML17249A001)
TN Americas LLC; Certificate of Compliance No. 1004, Renewed Amendment No. 14; letter dated September 27, 2017.	82 FR 44879
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated October 13, 2017.	(ML17304A278)
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated November 16, 2017.	(ML17325A408)
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated April 26, 2018.	(ML18124A195)
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated June 7, 2018.	ML18162A093
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004; supplemental letter dated September 3, 2019.	(ML19255E934)
Email from D. Shaw (TN Americas LLC) to N. Garcia Santos (NRC) RE: Certificate of Compliance No. 1004, Amendment 16 (NUHOMS®)—NRC Clarification of Terminology in Certificate of Compliance; Dated September 6, 2019.	ML19252A394
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004, Form 74—Correction to Appendix A of the Certificate of Compliance, dated, September 10, 2019.	(ML19253C390)
TN Americas LLC Request to Add Amendment No. 16 to Certificate of Compliance No. 1004, Form 29—Correction to Appendix A and B of the Certificate of Compliance; dated, September 11, 2019.	(ML19254C951)
TN Americas LLC Amendment No. 16 to Certificate of Compliance No. 1004	ML19262E160
Technical Specifications for TN Americas LLC Amendment No. 16 to Certificate of Compliance No. 1004	ML19262E154, ML19262E156, and ML19262E158
Preliminary Safety Evaluation Report for TN Americas LLC Amendment No. 16 to Certificate of Compliance No. 1004.	ML19262E161
Letter from A. Kock, NMSS/DFM, to R. McCullum, NEI, Endorsement of Graded Approach Criteria; dated January 8, 2020.	(ML19353D337)

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2019–0202. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder NRC–2019–0202; (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated June 15, 2020.

For the Nuclear Regulatory Commission.

Margaret Doane,

Executive Director of Operations.

[FR Doc. 2020–13729 Filed 6–29–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[NOTICE 2020–05]

Rulemaking Petition: Transfers From Candidate's Authorized Committee

AGENCY: Federal Election Commission.

ACTION: Rulemaking Petition: Notification of availability.

SUMMARY: On April 8, 2020, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend its regulations to limit the amount that the authorized committee of a federal candidate may transfer to a national political party committee. The Petition proposes to limit these transfers so that a self-funded candidate cannot transfer funds derived from the candidate's personal funds to a national political party committee if the transferred funds would exceed the annual limit on an individual's contributions to a national party committee. The Commission seeks comment on the Petition.

DATES: Comments must be submitted on or before August 31, 2020.

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at *http://sers.fec.gov/fosers/,* reference REG 2020–02.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Knop, Assistant General Counsel, or Ms. Heather Filemyr, Attorney, Office of the General Counsel, at *CommitteeTransfers@fec.gov.*

SUPPLEMENTARY INFORMATION: On April 8, 2020, the Commission received a Petition for Rulemaking from Citizens United and Citizens United Foundation (''Petition''). The Petition asks the Commission to amend 11 CFR 113.2(c) ''to limit the amounts that an authorized committee of a federal candidate may transfer to a committee of a national political party in order to prevent a self-funded candidate from transferring campaign funds derived from his or her personal funds in amounts that exceed the annual limits imposed on an individual's contributions to a national party committee.'' Petition at 1.

The Petition involves several statutory and regulatory provisions. The Federal Election Campaign Act, 52 U.S.C. 30101–45 (''FECA''), provides that a ''contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual . . . for transfers, without limitation, to a national, State, or local committee of a political party.'' 52 U.S.C. 30114(a)(4). Similarly, Commission regulations state: ''funds in a campaign account . . . [m]ay be transferred without limitation to any national, State, or local committee of any political party.'' 11 CFR 113.2(c). In addition, generally ''candidates for Federal office may make unlimited expenditures from personal funds'' and so may contribute unlimited amounts from personal funds to their authorized committees.[1] 11 CFR 110.10.

The Petition asserts that in March 2020 ''a major loophole came to light'' in how unlimited transfers from candidates' authorized committees to party committees interact with the allowance for candidates to contribute unlimited personal funds to their campaigns. Petition at 2. Citing a news report, the Petition states that Michael Bloomberg, recently a candidate for president, transferred 18 million dollars from his authorized committee to the Democratic National Committee (''DNC'') at the conclusion of his campaign and that the transferred funds ''derived from the candidate's personal funds, which are not subject to any contribution limits.'' *Id.* The Petition further states that the reported 18 million dollar transfer from Mr. Bloomberg's campaign account ''is more than 500 times greater than the amount that he could directly contribute to the DNC.'' *Id.* at 3. Further, the Petition claims that under the Commission's current regulations, ''[w]ealthy individuals could: declare their candidacy for any federal elected office; contribute untold millions of dollars of his or her own money to the campaign; promptly withdraw his or her candidacy after spending a token sum; and thereafter transfer the balance of the campaign's funds to the national party committee of his or her choice.'' *Id.* According to the Petition, ''[t]his is clearly not what was intended when Congress authorized the transfer surplus campaign funds to national party committees.'' *Id.* To address this possibility, the Petition proposes that the Commission revise 11 CFR 113.2(c) to ''limit the amount that a campaign committee can transfer to a national political party committee to the sum total of contributions received by the committee that'' are subject to FECA's amount limitations ''on contributions by individuals, multi-candidate PACs and party committees.'' *Id.*

The Commission seeks comment on the Petition. The public may inspect the Petition on the Commission's website at *http://sers.fec.gov/fosers/.*

The Commission will not consider the Petition's merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

Dated: June 18, 2020.

On behalf of the Commission,

Steven T. Walther,

Vice Chairman, Federal Election Commission.

[FR Doc. 2020–13573 Filed 6–29–20; 8:45 am]

BILLING CODE 6715–01–P

[1] Certain limitations apply to presidential candidates receiving funds from the Presidential Election Campaign Fund or the Presidential Primary Matching Payment Account. *See* 11 CFR 110.10.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 43

[Docket No. OCC–2019–0012]

FEDERAL RESERVE SYSTEM

12 CFR Part 244

[Docket No. OP–1688]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 373

RIN 3064–ZA07

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1234

[Notice No. 2019–N–7]

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 246

[Release No. 34–89100]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 267

[FR–6172–N–02]

Credit Risk Retention—Notification of Commencement of Review; Extension of Review Period

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); U.S. Securities and Exchange Commission (Commission); Federal Housing Finance Agency (FHFA); and Department of Housing and Urban Development (HUD).

ACTION: Notification of commencement of review; extension of review period.

SUMMARY: The OCC, Board, FDIC, Commission, FHFA, and HUD (the agencies) are providing notice of the extension of the period for the review, and publication of determination of the review, of the definition of qualified residential mortgage; the community-focused residential mortgage exemption; and the exemption for qualifying three-to-four unit residential mortgage loans, in each case as currently set forth in the Credit Risk Retention Regulations (as defined below) as adopted by the agencies.

DATES: The period for completion of the review of the subject residential mortgage provisions and publication of notice disclosing determination of this review is extended until June 20, 2021.

FOR FURTHER INFORMATION CONTACT:

OCC: Daniel Borman, Senior Attorney, (202) 649–6929 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office; Ajay Palvia, (202) 649–5505, Senior Financial Economist, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Flora H. Ahn, Special Counsel, (202) 452–2317, David W. Alexander, Senior Counsel, (202) 452–287, or Matthew D. Suntag, Senior Counsel, (202) 452–3694, Legal Division; Donald N. Gabbai, Lead Financial Institutions Policy Analyst, Division of Supervision and Regulation, (202) 452–3358; Karen Pence, Assistant Director, Division of Research & Statistics, (202) 452–2342; Nikita Pastor, Senior Counsel, Division of Consumer & Community Affairs, (202) 452–3692; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Rae-Ann Miller, Associate Director, (202) 898–3898; Kathleen M. Russo, Counsel, (703) 562–2071, *krusso@fdic.gov;* or Phillip E. Sloan, Counsel, (703) 562–6137, *psloan@fdic.gov,* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

Commission: Arthur Sandel, Special Counsel; Kayla Roberts, Special Counsel; Katherine Hsu, Chief, (202) 551–3850, in the Office of Structured Finance, Division of Corporation Finance; or Chandler Lutz, Economist, (202) 551–6600, in the Office of Risk Analysis, Division of Economic and Risk Analysis, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

FHFA: Ron Sugarman, Principal Policy Analyst, Office of Financial Analysis, Modeling and Simulations, (202) 649–3208, *Ron.Sugarman@fhfa.gov,* or Peggy K. Balsawer, Associate General Counsel, Office of General Counsel, (202) 649–3060, *Peggy.Balsawer@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

HUD: Keith Becker, Deputy Assistant Secretary for Risk Management & Regulatory Affairs, U.S. Department of Housing & Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number (202) 402–3722 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The credit risk retention regulations are codified at 12 CFR part 43; 12 CFR part 244; 12 CFR part 373; 17 CFR part 246; 12 CFR part 1234; and 24 CFR part 267 (the Credit Risk Retention Regulations). The Credit Risk Retention Regulations require the OCC, Board, FDIC, and Commission, in consultation with the FHFA and HUD, to commence, and give notice of commencement of, a review of the following provisions of the Credit Risk Retention Regulations no later than December 24, 2019: (1) The definition of qualified residential mortgage (QRM) in section _.13 of the Credit Risk Retention Regulations; (2) the community-focused residential mortgage exemption in section _.19(f) of the Credit Risk Retention Regulations; and (3) the exemption for qualifying three-to-four unit residential mortgage loans in section _.19(g) of the Credit Risk Retention Regulations (collectively, the ''subject residential mortgage provisions''). The Credit Risk Retention Regulations also require that, after completion of this review, but no later than six months after publication of a notification announcing the review, unless extended by the agencies, the agencies publish a notification disclosing the determination of their review. Notification of the commencement of the review was published in the **Federal Register** on December 20, 2019 (84 FR 70073).

This notification is being published to give notice that, due to various factors considered among the agencies, including market and other disruptions precipitated by COVID–19, the agencies have determined to extend the period for completion of their review of the subject residential mortgage provisions and publication of notice disclosing determination of this review until June 20, 2021.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 19, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

Dated: June 19, 2020.

By the Securities and Exchange Commission.

Vanessa A. Countryman,

Secretary.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

By the Department of Housing and Urban Development.

Len Wolfson,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2020–13830 Filed 6–29–20; 8:45 am]

BILLING CODE 6210–01–P; 4810–33–P; 6210–01–P; 3064–01–P; 8070–01–P; 8011–01–P; 4210–67–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–1054; Notice No. 25–20–07–SC]

Special Conditions: Boeing Commercial Airplanes Model 777–9 Airplane; Overhead Flightcrew Rest Compartment Occupiable During Taxi, Takeoff, and Landing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Commercial Airplanes (Boeing) Model 777–9 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an overhead flightcrew rest (OFCR) compartment occupiable during taxi, takeoff, and landing (TT&L). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before August 14, 2020.

ADDRESSES: Send comments identified by Docket No. FAA–2019–1054 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey

Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On December 6, 2013, Boeing applied for an amendment to Type Certificate No. T00001SE to include the new 777–9 airplane. The application date was extended to March 30, 2016, at Boeing's request. The Boeing Model 777–9 airplane, which is a derivative of the Boeing Model 777 airplane currently approved under Type Certificate No. T00001SE, is a twin-engine, transport-category airplane with seating for 495 passengers, and a maximum takeoff weight of 775,000 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the 777–9 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–9 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–9 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–9 airplane will incorporate the following novel or unusual design features:

An overhead flightcrew rest (OFCR) compartment occupiable during taxi, takeoff, and landing.

Discussion

Crew rest compartments have been previously installed and certificated on several Boeing airplane models in locations such as in the main passenger seating area, the overhead space above the main passenger-cabin seating area, and below the passenger-cabin seating area within the cargo compartment. In each case, the Administrator determined that the applicable regulations (*i.e.,* 14 CFR part 25) did not provide all of the necessary requirements, because each installation had unique features by virtue of its design, location, and use on the airplane.

For Boeing Model 777 airplanes, the FAA issued Special Conditions No. 25–260–SC, dated April 14, 2004, for OFCR compartments allowed to be occupied during TT&L, as well as during flight. However, after issuance of Special Conditions No. 25–260–SC, the FAA issued Special Conditions No. 25–418–SC for the Boeing Model 787–8 airplane, for the same novel design feature, with changes to better address oxygen systems and fire suppressors. Those special conditions reflected the methodology necessary to provide an equivalent level of safety for remote OFCR compartments. Therefore, new special conditions are proposed for this design feature on Boeing Model 777–9 airplanes, in lieu of Special Conditions No. 25–260–SC.

For the Boeing Model 777–9 airplane, the OFCR compartment is located in the overhead space above the main passenger-cabin seating area immediately aft of the first pair of main-deck emergency exits (Door 1). The compartment includes two private berths and up to two seats. Occupancy of the compartment will be limited to a maximum of four trained crewmembers during flight, and two trained flightcrew members, one in each seat, during TT&L. The compartment will be accessed from the main deck by stairs through a vestibule. In addition, a secondary evacuation route, which opens directly into the main passenger seating area, will be available as an alternate route for evacuating occupants of the compartment. A smoke-detection system and an oxygen system will be provided in the compartment. Other optional features, such as a sink with cold-drink stowage or a lavatory, may be provided as well.

This Boeing Model 777–9 airplane OFCR compartment is novel or unusual to part 25 due to its design, location, and use on the airplane. This compartment is particularly novel or unusual in that it is located in the overhead area of the passenger compartment, and will be occupied by trained flightcrew during TT&L. Due to the novel or unusual features associated with the installation of this compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Operational Evaluations and Approval

These special conditions establish requirements for OFCR-compartment design approvals administered by the FAA's Aircraft Certification Service. Before operational use of an OFCR compartment, the FAA's Flight Standards Service must evaluate and approve the ''basic suitability'' of the compartment for crew occupation. Additionally, if an operator wishes to use an OFCR compartment as ''sleeping quarters,'' the compartment must undergo an additional evaluation and approval (reference 14 CFR 121.485(a), 121.523(b), and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of parts 121 or 135.

To obtain an operational evaluation, the type certificate holder must contact the appropriate aircraft evaluation group (AEG) in the Flight Standards Service and request a ''basic suitability'' evaluation or a ''sleeping quarters'' evaluation of its OFCR compartment. The results of these evaluations should be documented in a Boeing Model 777–9 airplane flight standardization board (FSB) report appendix. Individual operators may reference these standardized evaluations in discussions with their FAA principal operating inspector as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved OFCR compartment configuration that affect crewmember emergency egress, or any other procedures affecting safety of the occupying crewmembers or related emergency training, will require re-evaluation and approval. The applicant for an OFCR compartment design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new compartment evaluation is required. The results of a reevaluation should also be documented in a Boeing Model 777–9 airplane FSB report appendix.

Procedures must be developed to ensure that a crewmember, acting as firefighter, when entering the OFCR compartment through the stairway or vestibule to fight a fire, will examine the stairway or vestibule, and the adjacent galley or lavatory areas (if installed), for the source of the fire before entering the remaining areas of the compartment. This is intended to ensure that the source of the fire is not between the crewmember and the entrance to the OFCR compartment. If a fire source is not immediately evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the OFCR compartment entrance first, then proceed to check areas in such a manner that the fire source, when found, will not be between the firefighter and their means of escape from the compartment. Procedures describing methods for searching the OFCR compartment for fire source(s) must be transmitted to operators for incorporation into their training programs and appropriate operational manuals.

Rescue-Crew Training Materials

Installation of an OFCR compartment that can be occupied during TT&L by flightcrew is unusual. Appropriate information must be provided to airport fire-rescue personnel so that they understand that this remote compartment may be occupied during an emergency landing. The applicant must provide rescue-crew training materials to the local FAA Airports Division, Safety and Standards Branch, to address this issue. The FAA Airports Division, Safety and Standards Branch, will ensure that these materials are distributed to appropriate airports, domestic and foreign. Special conditions are not considered appropriate to address this issue.

Discussion of the Special Conditions

These special conditions apply to OFCR compartments that are occupiable during TT&L and are installed immediately aft of the Door 1 exits on Boeing Model 777–9 airplanes. These special conditions for Boeing Model 777–9 airplanes supplement 14 CFR part 25. Except as noted below, these special conditions for Boeing Model 777–9 airplanes are identical to Boeing Model 777 airplane Special Conditions No. 25–260–SC.

Conditions 6 and 16 contain requirements for the exit signs that must be provided in the OFCR compartment. Symbols that satisfy the equivalent-level-of-safety finding established for Boeing Model 777–9 airplanes may be used in lieu of the text required by § 25.812(b)(1)(i). The FAA expects that the meaning of any symbolic exit sign will be reinforced as a part of crewmember training in evacuation procedures.

Condition 15 contains requirements for supplemental oxygen systems. Earlier Special Conditions No. 25–260–SC for Boeing Model 777–9 airplanes required that each berth be equipped with two oxygen masks. This was intended to address the case where a person not in a berth was moving around within the flightcrew rest compartment and needed quick access to an oxygen mask. For Boeing Model 777–9 airplanes, the requirement to have two masks per berth may not always meet the objective of having masks available to persons who are in transition within the compartment. Therefore, the wording of this condition has been modified to better state the objective, rather than specifying a two-masks-per-berth requirement. In addition, the requirement to have adequate illumination to retrieve an oxygen mask, while implied previously, is made explicit in these special conditions.

Condition 18 contains the requirements for materials used in the construction of the OFCR compartment. Special Conditions No. 25–260–SC stated that § 25.853, as amended by Amendment 25–83, is the appropriate regulation. Section 25.853 has since been further amended, and these special conditions reference the latest amendment level for § 25.853, Amendment 25–116.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification-basis requirements. One particular area of concern is that installation of OFCR compartments changes the compartment volume in the overhead area of the airplane. The applicant must comply with the pressurized compartment loads requirements of § 25.365(e), (f), and (g) for the OFCR compartment, as well as for any other airplane compartments the decompression characteristics of which are affected by the installation of an OFCR compartment.

Compliance with § 25.813, emergency-exit access requirements, must be demonstrated for all phases of flight during which occupants will be present.

The configuration includes a seat installed adjacent to the OFCR compartment exit, with the compartment occupiable during TT&L. Note that the emergency-landing conditions requirements of §§ 25.561(d) and 25.562(c)(8) apply to this configuration. Deformations resulting from required static and dynamic structural tests must not impede rapid evacuation of the OFCR compartment occupants. Seat deformations must not prevent opening of the secondary escape hatch or rapid evacuation through the secondary escape route.

Section 25.785(h)(2) mandates that the flight attendant seats required by the operating rules be located in a position that provides a direct view of the cabin area for which the flight attendant is responsible. Because the OFCR compartment will be occupied only by trained crewmembers, the FAA does not consider this requirement applicable to the seating area in the OFCR compartment.

Section 25.787(a) requires each stowage compartment in the passenger cabin, except for underseat and overhead stowage compartments for passenger convenience, to be completely enclosed. This requirement does not apply to the flight deck, because flightcrew members must be able to quickly access items to better perform their duties. Flightcrew members occupying the OFCR compartment will not be performing flight-deck duties however. Therefore, stowage compartments in the OFCR compartment, except for underseat compartments for occupant convenience, should be completely enclosed. This will provide occupants of the OFCR compartment a similar level of safety to that provided to passengers on the main deck. Condition 20 contains this requirement.

Section 25.811(c) requires that means be provided to assist occupants in locating the exits in conditions of dense smoke. Section 25.812(e) requires floor-proximity emergency-escape path marking to provide guidance for passengers when all sources of illumination above 4 feet from the cabin aisle floor are totally obscured. The FAA considers that the current OFCR compartment design is sufficient in regard to these regulations. The two OFCR compartment seats are only a couple of steps away from the stairway, and when a trained flightcrew member is at the top of the stairway, the stairway itself will guide them to the main deck. When the crewmember is on the main deck, floor proximity lighting and exit-marker signs, which are less than 4 feet above the floor, are provided.

Section 25.813(e) prohibits installation of interior doors between passenger compartments, but the FAA has historically found flightcrew rest-compartment doors to be acceptable, because flightcrew rest compartments are not passenger compartments. Conditions 2 and 16 provide requirements for flightcrew rest-compartment doors, conditions that are considered to provide an appropriate level of safety to OFCR compartment occupants.

Sections 25.1443, 25.1445, and 25.1447 describe oxygen requirements for flightcrew, passengers, and cabin attendants. Flightcrew members occupying the OFCR compartment are not on duty, and therefore are considered passengers in determining compliance with these oxygen regulations.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–9 airplane.

Conclusion

This action affects only a certain novel or unusual design feature on one airplane model. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777–9 airplanes with an OFCR compartment installed adjacent to, or immediately aft of, the first pair of exits (Door 1).

1. During flight, occupancy of the OFCR compartment is limited to the total number of installed bunks and seats in the compartment, and that are approved to the maximum flight-loading conditions. During TT&L, occupancy of the OFCR compartment is limited to the total number of installed seats approved for the flight- and ground-load conditions, and emergency-landing conditions. Therefore, the OFCR compartment is limited to a maximum of four crewmembers during flight, and two flightcrew members during TT&L.

a. Appropriate placards must be located inside and outside each entrance to the OFCR compartment to indicate:

i. Occupancy is limited to flightcrew members (pilots) during TT&L.

ii. The maximum number of crewmembers allowed during flight, and the maximum number of flightcrew members allowed during TT&L.

iii. Occupancy is restricted to crewmembers the pilot in command has determined to be both trained in the emergency procedures for the OFCR compartment and able to rapidly use the evacuation routes.

iv. Smoking is prohibited in the OFCR compartment.

v. Stowage in the OFCR compartment area is limited to crew personal luggage. The stowage of cargo or passenger baggage is not allowed.

b. At least one ashtray must be located on both the inside and the outside of any entrance to the OFCR compartment.

c. A limitation in the airplane flight manual must restrict occupancy to crewmembers the pilot in command has determined to be both trained in the emergency procedures for the OFCR compartment and able to rapidly use the evacuation routes of the OFCR compartment.

2. The following requirements are applicable to OFCR compartment door(s):

a. A means must be provided for any door installed between the OFCR compartment and the passenger cabin to be quickly opened from inside the OFCR compartment, even when crowding from an emergency evacuation occurs at each side of the door.

b. Doors installed across emergency egress routes must have a means to latch them in the open position. The latching means must be able to withstand the loads imposed upon it when the door is subjected to the ultimate inertia forces, relative to the surrounding structure, listed in § 25.561(b).

c. A placard must be displayed in a conspicuous place on the outside of the entrance door of the OFCR compartment, and on any other door(s) installed across emergency egress routes of the OFCR compartment, requiring those doors to be latched open when the OFCR compartment is occupied during TT&L.

i. This requirement does not apply to emergency-escape hatches installed in the floor of the OFCR compartment.

ii. A placard must be displayed in a conspicuous place on the outside of the entrance door to the OFCR compartment, and that requires the compartment door to be closed and locked when it is not occupied.

iii. Procedures for meeting these requirements must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

d. For all doors installed in the OFCR compartment, a means must be provided to prevent anyone from being trapped inside the OFCR compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the OFCR compartment at any time.

3. In addition to the requirements of § 25.562 for seats that are occupiable during takeoff and landing, and restraint systems, the OFCR compartment structure must be compatible with the loads imposed by the seats as a result of the conditions specified in § 25.562(b).

4. At least two emergency evacuation routes must be available for use by each occupant of the OFCR compartment to rapidly evacuate to the main cabin. These evacuation routes must be able to be closed from the main passenger cabin after evacuation. In addition:

a. The routes must be located with sufficient separation within the OFCR compartment to minimize the possibility of an event either inside or outside of the OFCR compartment rendering both routes inoperative.

Compliance with requirements of Condition 4.a. of these special conditions may be shown by inspection or by analysis. Regardless of which method is used, the maximum acceptable distance between OFCR compartment exits is 60 feet.

Compliance by Inspection

Inspection may be used to show compliance with Condition 4.a. of these special conditions. An inspection finding that an OFCR compartment has evacuation routes located so that each occupant of the seats and berths has an unobstructed route to at least one of the OFCR compartment exits, regardless of the location of a fire, would be reason for a finding of compliance. Because a berth is required to have two separate exits, a fire within a berth that blocks an occupant of that berth from only one exit or the other need not be considered. Therefore, OFCR compartment exits that are located at opposite ends (*i.e.,* adjacent to opposite end walls) of the OFCR compartment would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show that the OFCR compartment configuration and interior features allow all occupants of the OFCR compartment to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

i. Fire inside or outside the OFCR compartment, considered separately, and the design elements used to reduce the available fuel for the fire.

ii. Design elements used to reduce fire-ignition sources in the OFCR compartment.

iii. Distribution and quantity of emergency equipment within the OFCR compartment.

iv. Structural failure or deformation of components that could block access to the available evacuation routes (*e.g.,* seats, folding berths, contents of stowage compartments, etc.).

v. An incapacitated person blocking the evacuation routes.

vi. Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. Possibilities for design components affecting evacuation that should be considered include, but are not limited to, seat deformations (reference §§ 25.561(d) and 25.562(c)(8)), seat-back break-over, rigid structure that reduces access from one part of the compartment to another, and items known to be the cause of potential hazards. Factors that also should be considered are availability of emergency equipment to address fire hazards; availability of communications equipment; supplemental restraint devices to retain items of mass that, if broken loose, could hinder evacuation; and load-path isolation between components containing evacuation routes.

Analysis of fire threats should be used in determining placement of required fire extinguishers and protective breathing equipment (PBE). This analysis should consider the possibility of fire in any location in the OFCR compartment. The location and quantity of PBE equipment and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the OFCR compartment.

The intent of this condition is to provide sufficient exit-route separation. Therefore, the exit-separation analysis described above should not be used to approve OFCR-compartment exits that have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For an OFCR compartment with one exit located near the forward or aft end of the compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total OFCR-compartment length), the exit separation from one exit to the other should not be less than 50 percent of the total OFCR compartment length.

For OFCR compartments with neither required OFCR compartment exit located near the forward or aft end of the compartment (as measured by not having the centroid of either exit opening within 20 percent of the forward or aft end of the total OFCR compartment length), the exit separation from one exit to the other should not be less than 30 percent of the total OFCR-compartment length.

b. The evacuation routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the OFCR-compartment exits. One of the two OFCR-compartment exits should not be located where normal movement or evacuation by passengers occurs (main aisle, cross aisle, or galley complex, for example) that would impede egress from the OFCR compartment. If an evacuation route is in an area where normal movement or evacuation of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If low headroom is at or near the evacuation route, provisions must be made to prevent or to protect occupants of the OFCR compartment from head injury. Use of evacuation routes must not depend on any powered device. If an OFCR-compartment exit is over an area of passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the process of evacuating an incapacitated person(s). If such an evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

c. Emergency evacuation procedures, including procedures for emergency evacuation of an incapacitated occupant from the OFCR compartment, must be established. The applicant must transmit all of these procedures to the operator for incorporation into its training programs and appropriate operational manuals.

d. A limitation must be included in the airplane flight manual or other suitable means to require that crewmembers are trained in the use of the OFCR-compartment evacuation routes. This training must instruct crew to ensure that the OFCR compartment (including seats, doors, etc.) is in its proper TT&L configuration during TT&L.

e. In the event no flight attendant is present in the area around the door to the OFCR compartment, and also during an emergency, including an emergency evacuation, a means must be available to prevent passengers on the main deck from entering the OFCR compartment.

f. Doors or hatches separating the OFCR compartment from the main deck must not adversely affect evacuation of occupants on the main deck (slowing evacuation by encroaching into aisles, for example) or cause injury to those occupants during opening or while opened.

g. The means of opening doors and hatches to the OFCR compartment must be simple and obvious. The OFCR compartment doors and hatches must be able to be closed from the main passenger cabin.

5. A means must be available for evacuating an incapacitated person, representative of a 95th percentile male, from the OFCR compartment to the passenger cabin floor. Such an evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the OFCR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes with stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the OFCR compartment, or to the first landing, whichever is lower.

6. The following signs and placards must be provided in the OFCR compartment and they must meet the following criteria:

a. At least one exit sign, located near each OFCR compartment exit, meeting the emergency lighting requirements of § 25.812(b)(1)(i). One allowable exception would be a sign with reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (white, cream, light beige, for example). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch-wide background border around the letters would be acceptable. Another allowable exception is a sign with a symbol that the FAA has determined to be equivalent for use as an exit sign in an OFCR compartment.

b. An appropriate placard located conspicuously on or near each OFCR-compartment door or hatch that defines the location and the operating instructions for access to and operation of the door or hatch.

c. Placards must be readable from a distance of 30 inches under emergency lighting conditions.

d. The door or hatch handles, and operating-instruction placards required by Condition 6.b. of these special conditions, must be illuminated to at least 160 microlamberts under emergency lighting conditions.

7. A means must be available, in the event of failure of the airplane main power system, or of the normal OFCR-compartment lighting system, for emergency illumination to be automatically provided for the OFCR compartment.

a. This emergency illumination must be powered independently of the main lighting system.

b. The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

c. The illumination level must be sufficient to allow occupants of the OFCR compartment to locate and move to the main passenger cabin floor by means of each evacuation route.

d. The illumination level must be sufficient, with the privacy curtains in the closed position, for each occupant of the OFCR compartment to locate a deployed oxygen mask.

8. A means must be available for two-way voice communications between crewmembers on the flight deck and occupants of the OFCR compartment. Two-way communications must also be available between occupants of the OFCR compartment and each flight attendant station in the passenger cabin that is required, per § 25.1423(g), to have a public-address-system microphone. In addition, the public-address system must include provisions to provide only the relevant information to the crewmembers in the OFCR compartment (*e.g.,* fire in flight, aircraft depressurization, preparation of the compartment for landing, etc.). That is, provisions must be made so that occupants of the OFCR compartment will not be disturbed with normal, non-emergency announcements made to the passenger cabin.

9. A means must be available for manual activation of an aural emergency-alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor-level emergency exits to alert occupants of the OFCR compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units, for a period of at least ten minutes.

10. A means, readily detectable by seated or standing occupants of the OFCR compartment, must be in place to indicate when seat belts should be fastened. Seatbelt-type restraints must be provided for berths and must be compatible with the sleeping position during cruise conditions. A placard on each berth must require that these restraints be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head position, a placard must identify that head position.

11. Protective breathing equipment must be provided in accordance with § 25.1439, except that in lieu of a device for each crewmember, the following must be provided: Two PBE devices approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater. The following equipment must also be provided in the OFCR compartment:

a. At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur.

b. One flashlight.

Note: Additional PBE devices and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Condition 11 of these special conditions, may be required as a result of the egress analysis accomplished to satisfy Condition 4.a. of these special conditions.

12. A smoke- or fire-detection system (or systems) must be provided that monitors each occupiable space within the OFCR compartment, including those areas partitioned by curtains or doors. Flight tests must be conducted to show compliance with this requirement. If a fire occurs, each system (or systems) must provide:

a. A visual indication to the flight deck within one minute after the start of a fire.

b. An aural warning in the OFCR compartment.

c. A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

13. A means to fight a fire must be provided. This can be either a built-in

extinguishing system or a manual, hand-held extinguishing system.

a. For a built-in extinguishing system:

i. The system must have adequate capacity to suppress a fire considering the fire threat, volume of the compartment, and the ventilation rate. The system must have sufficient extinguishing agent to provide an initial knockdown and suppression environment per the minimum performance standards that have been established for the agent being used. In addition, certification flight testing will verify the acceptable duration that the suppression environment can be maintained.

ii. If the capacity of the extinguishing system does not provide effective fire suppression that will last for the duration of flight from the farthest point in route to the nearest suitable landing site expected in service, an additional manual firefighting procedure must be established. For the built-in extinguishing system, the time duration for effective fire suppression must be established and documented in the firefighting procedures in the airplane flight manual. If the duration of time for demonstrated effective fire suppression provided by the built-in extinguishing agent will be exceeded, the firefighting procedures must instruct the crew to:

1. Enter the OFCR compartment at the time that demonstrated fire suppression effectiveness will be exceeded.

2. Check for and extinguish any residual fire.

3. Confirm that the fire is out.

b. For a manual, hand-held extinguishing system (designed as the sole means to fight a fire or to supplement a built-in extinguishing system of limited suppression duration) for the OFCR compartment:

i. A limitation must be included in the airplane flight manual or other suitable means requiring that crewmembers be trained in the firefighting procedures.

ii. The OFCR compartment design must allow crewmembers equipped for firefighting to have unrestricted access to all parts of the OFCR compartment.

iii. The time for a crewmember on the main deck to react to the fire alarm, don the firefighting equipment, and gain access to the OFCR compartment must not exceed the time it would take for the compartment to become filled with smoke, thus making it difficult to locate the fire source.

iv. Approved procedures describing methods for searching the OFCR compartment for fire source(s) must be established. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

14. A means must be provided to prevent hazardous quantities of smoke or extinguishing agent originating in the OFCR compartment from entering any other occupiable compartment.

a. Small quantities of smoke may penetrate from the OFCR compartment into other occupied areas during the one-minute smoke-detection time.

b. A provision in the firefighting procedures must ensure that all doors and hatches at the OFCR compartment are closed after evacuation of the compartment and during firefighting to minimize smoke and extinguishing agent entering other occupiable compartments.

c. All smoke entering any occupiable compartment when access to the OFCR compartment is open for evacuation must dissipate within five minutes after the access to the OFCR compartment is closed.

d. Hazardous quantities of smoke may not enter any occupied compartment during access to manually fight a fire in the OFCR compartment. The amount of smoke entrained by a firefighter exiting the OFCR compartment is not considered hazardous.

e. Flight tests must be conducted to show compliance with this requirement.

15. A supplemental oxygen system within the OFCR compartment must provide the following:

a. At least one mask for each seat and berth in the OFCR compartment.

b. If a destination area (such as a changing area) is provided in the OFCR compartment, an oxygen mask must be readily available for each occupant who can reasonably be expected to be in the destination area (with the maximum number of required masks within the destination area being limited to the placarded maximum occupancy of the OFCR compartment).

c. An oxygen mask must be readily accessible to each occupant who can reasonably be expected to be moving from the main cabin into the OFCR compartment, moving around within the OFCR compartment, or moving from the OFCR compartment to the main cabin.

d. The system must provide an aural and visual alert to warn occupants of the OFCR compartment to don oxygen masks in the event of decompression. The aural and visual alerts must activate concurrently with deployment of the oxygen masks in the passenger cabin. To compensate for sleeping occupants, the aural alert must be heard in each section of the OFCR compartment and must sound continuously for a minimum of 5 minutes or until a reset switch within the OFCR compartment is activated. A visual alert that informs occupants that they must don an oxygen mask must be visible in each section.

e. A means must be in place by which oxygen masks can be manually deployed from the flight deck.

f. Approved procedures must be established for OFCR occupants in the event of decompression. These procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

g. The supplemental oxygen system for the OFCR compartment must meet the same 14 CFR part 25 regulations as the supplemental oxygen system for the passenger cabin occupants, except for the 10 percent additional masks requirement of 14 CFR 25.1447(c)(1).

h. The illumination level of the normal OFCR-compartment lighting system must automatically be sufficient for each occupant of the compartment to locate a deployed oxygen mask.

16. The following additional requirements apply to OFCR compartments that are divided into several sections by the installation of curtains or partitions:

a. A placard is required adjacent to each curtain that visually divides or separates, for example, for privacy purposes, the OFCR compartment into multiple sections. The placard must require that the curtain(s) remains open when the section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private section and, therefore, does not require a placard.

b. For each section of the OFCR compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

i. No-smoking placard requirement (Condition 1).

ii. Emergency illumination requirement (Condition 7).

iii. Emergency alarm-system requirement (Condition 9).

iv. Seatbelt-fasten signal or return-to-seat signal as applicable requirement (Condition 10).

v. Smoke- or fire-detection system requirement (Condition 12).

vi. Oxygen-system requirement (Condition 15).

c. OFCR compartments that are visually divided to the extent that evacuation could be adversely affected must have exit signs directing occupants to the exit at the primary stairway. The exit signs must be provided in each separate section of the OFCR compartment, except for curtained bunks, and must meet requirements of

§ 25.812(b)(1)(i). An exit sign with reduced background area or a symbolic exit sign, as described in Condition 6.a. of these special conditions, may be used to meet this requirement.

d. For sections within an OFCR compartment created by the installation of a rigid partition with a door separating the sections, the following requirements of these special conditions must be met with the door open or closed:

i. A secondary evacuation route from each section to the main deck, or the applicant must show that any door between the sections precludes anyone from being trapped inside a section of the compartment. Removal of an incapacitated occupant from within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short time duration, such as a changing area or lavatory, is not required, but removal of an incapacitated occupant from within such a small room must be considered.

ii. Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

iii. No more than one door may be located between any seat or berth and the primary stairway door.

iv. In each section, exit signs meeting requirements of § 25.812(b)(1)(i), or shown to have an equivalent level of safety, must direct occupants to the exit at the primary stairway. An exit sign with reduced background area or a symbolic exit sign, as described in Condition 6.a. of these special conditions, may be used to meet this requirement.

v. Conditions 1 (no-smoking placards), 7 (emergency illumination), 9 (emergency alarm system), 10 (fasten-seatbelt signal or return-to-seat signal as applicable), 12 (smoke- or fire-detection system), and 15 (oxygen system) must be met with the OFCR compartment door open or closed.

vi. Conditions 8 (two-way voice communication) and 11 (emergency firefighting and protective equipment) must be met independently for each separate section, except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

17. If a waste-disposal receptacle is fitted in the OFCR compartment, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

18. Materials (including finishes or decorative surfaces applied to the materials) must comply with the requirements of § 25.853 as amended by Amendment 25–116. Seat cushions and mattresses must comply with the requirements of § 25.853(c) as amended by Amendment 25–116, and the test requirements of part 25, appendix F, part II, or other equivalent methods.

19. The addition of a lavatory within the OFCR compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck, except with regard to Condition 12 of these special conditions for smoke detection.

20. Each stowage compartment in the OFCR compartment, except for underseat compartments for occupant convenience, must be completely enclosed. All enclosed stowage compartments within the OFCR compartment that are not limited to stowage of emergency equipment or airplane-supplied equipment (*i.e.,* bedding) must meet the design criteria described in the table below. Enclosed stowage compartments greater than 200 ft.^{3} in interior volume are not addressed by this special condition. The in-flight accessibility of very large, enclosed stowage compartments, and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand-held fire-extinguishing system, will require additional fire-protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

DESIGN CRITERIA FOR ENCLOSED STOWAGE COMPARTMENTS NOT LIMITED TO STOWAGE OF EMERGENCY OR AIRPLANE-SUPPLIED EQUIPMENT

Fire protection features	Applicability of fire protection requirements by interior volume		
	Less than 25 cubic feet	25 cubic feet to less than 57 cubic feet	57 cubic feet to 200 cubic feet
Compliant Materials of Construction [1]	Yes	Yes	Yes.
Smoke or Fire Detectors [2]	No	Yes	Yes.
Liner [3]	No	Conditional	Yes.
Fire Location Detect [4]	No	Yes	Yes.

[1] Compliant Materials of Construction: The material used in constructing each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.,* 14 CFR part 25 Appendix F, Parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft.^{3} in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] Smoke or Fire Detectors: Enclosed stowage compartments equal to or exceeding 25 ft.^{3} in interior volume must be provided with a smoke- or fire-detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire.

(b) An aural warning in the OFCR compartment.

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the locations of flight attendants throughout the main passenger compartment during various phases of flight.

[3] Liner: If material used in constructing the stowage compartment can be shown to meet the flammability requirements of a liner for a Class B cargo compartment (*i.e.,* § 25.855 at Amendment 25–116, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft.^{3} but less than 57 ft.^{3} in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft.^{3} in interior volume but less than or equal to 200 ft.^{3}, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] Fire Location Detector: If an OFCR compartment has enclosed stowage compartments exceeding 25 ft.^{3} interior volume that are located separately from the other stowage compartments (located, for example, away from one central location, such as the entry to the OFCR compartment or a common area within the OFCR compartment, where the other stowage compartments are), that OFCR compartment would require additional fire-protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Des Moines, Washington, on June 5, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–12701 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0573; Product Identifier 2020–NM–078–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This proposed AD was prompted by a determination that the upper wing skin at engine nacelle points may be subject to undetected cracking. This proposed AD would require repetitive ultrasonic inspections of the upper wing skin at certain engine strut positions for cracking; repetitive detailed and ultrasonic inspections of the strut lower spar fitting, diagonal brace strut end clevis, and diagonal brace wing attach end clevis for cracking; repetitive detailed inspections of lower link fitting at certain engine strut positions for cracking; and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 14, 2020.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0573.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0573; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0573; Product Identifier 2020–NM–078–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this proposed AD.

Discussion

The FAA has received a report indicating that the upper wing skin at engine nacelle points may be subject to undetected cracking. Safety service related problems found on a Model 757 airplane led to a cross-model review of the upper wing skin at engine nacelle attach points and a revision to analysis criteria. The FAA has not received any reports of cracking on Model 747 airplanes, but existing inspections do not provide opportunities for crack detection prior to loss of residual strength in the fail-safe load path. Based on the findings for Model 757 airplanes, Boeing identified that loss of clamp-up due to shim migration, cracked fastener heads, or loss of torque causes cracking of the fasteners and fastener holes and may lead to cracking of the upper wing skin. Undetected cracks in the upper wing skin, strut lower spar fitting, or clevis lugs at either end of the diagonal brace and lower link fitting, if not addressed, could adversely affect the structural integrity of the engine strut and may lead to the separation of the strut to wing box assembly.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–57A2363 RB, dated December 23, 2019. The service information describes procedures for ultrasonic inspections of the upper wing skin at engine strut positions 1 through 4 for cracking; detailed and ultrasonic inspections of the strut lower spar fitting, diagonal brace strut end clevis, and diagonal brace wing attach end clevis for cracking; detail inspections of lower link fitting at engine strut positions 1 through 4 for cracking; and applicable on-condition actions. On-condition actions include repair.

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

FAA's Determination

The FAA is proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 747–57A2363 RB, Original issue, dated December 23, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0573.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 125 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	9 work-hours × $85 per hour = $765 per inspection cycle.	$0	$765 per inspection cycle	$95,625 per inspection cycle.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2020–0573; Product Identifier 2020–NM–078–AD.

(a) Comments Due Date

The FAA must receive comments by August 14, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a determination that the upper wing skin at engine nacelle attachment points may be subject to undetected cracking. The FAA is issuing this AD to address undetected cracking in the upper wing skin, strut lower spar fitting, or clevis lugs at either end of the diagonal brace and lower link fitting. This condition, if not addressed, could adversely affect the structural integrity of the engine strut and may lead to the separation of the strut to wing box assembly.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2363 RB, dated December 23, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–57A2363 RB, dated December 23, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–57A2363, dated December 23, 2019, which is referred to in Boeing Alert Requirements Bulletin 747–57A2363 RB, dated December 23, 2019.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 747–57A2363 RB, dated December 23, 2019, uses the phrase ''the original issue

date of Requirements Bulletin 747–57A2363 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–57A2363 RB, dated December 23, 2019, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov.*

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

Issued on June 15, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–13973 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0484; Product Identifier 2020–NM–051–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. This proposed AD was prompted by a report that an airplane failed to extend its nose landing gear (NLG) using the free fall method, due to loss of the green hydraulic system. This proposed AD would require repetitive tests of affected free fall actuators (FFA), and replacement of any affected FFA with a serviceable FFA, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 14, 2020.

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

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

For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0484.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0484; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0484; Product Identifier 2020–NM–051–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments the FAA receives, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the FAA receives about this NPRM.

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0076, dated March 30, 2020 (''EASA AD 2020–0076'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, and A340–300 series airplanes; Model A340–541 and –542 airplanes, and Model A340–642 and –643 airplanes. Airbus SAS Model A340–542 and A340–643 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that an airplane failed to extend its NLG using the free fall method, due to loss of the green hydraulic system. Investigation results identified that the magnets on certain FFAs were found detached on both electrical motors. The FAA is proposing this AD to address detached magnets on both electrical motors of the FFAs, which could prevent landing gear extension by the free fall method, possibly resulting in loss of control of the airplane after landing. See the MCAI for additional background information.

The FAA issued a related NPRM and supplemental NPRM (SNPRM) that proposed to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200, A330–200 Freighter, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. The related NPRM published in the **Federal Register** on June 26, 2019 (84 FR 30055). The related SNPRM published in the **Federal Register** on January 21, 2020 (85 FR 3279). The related NPRM and SNPRM were also prompted by a report that an airplane failed to extend its NLG using the free fall method, due to loss of the green hydraulic system. Since the related SNPRM was issued, Airbus and the FAA determined that any affected FFA must be replaced. In light of these changes, the FAA has withdrawn the related SNPRM as of June 8, 2020 (85 FR 34655), which intended to also withdraw the proposals in the NPRM published on June 26, 2019 (84 FR 30055). The FAA is now issuing this new NPRM for public comment.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0076 describes procedures for repetitive tests of affected FFAs and replacement of any affected FFA that fails a test with a serviceable FFA. EASA AD 2020–0076 also describes procedures for replacement of all affected FFAs, which terminates the repetitive tests. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2020–0076 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0076 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0076 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2020–0076 that is required for compliance with EASA AD 2020–0076 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0484 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 113 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0*	$340	$38,420

*The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the replacements specified in this proposed AD.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$0*	$170

*The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the on-condition replacements specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0484; Product Identifier 2020–NM–051–AD.

(a) Comments Due Date

The FAA must receive comments by August 14, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (7) of this AD, certificated in any category.

(1) Model A330–201, –202, –203, –223, and –243 airplanes.
(2) Model A330–223F and –243F airplanes.
(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.
(4) Model A340–211, –212, –213 airplanes.
(5) Model A340–311, –312, and –313 airplanes.
(6) Model A340–541 airplanes.
(7) Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by a report that an airplane failed to extend its nose landing gear (NLG) using the free fall method, due to loss of the green hydraulic system. The FAA is issuing this AD to address detached magnets on both electrical motors of the free fall actuators (FFAs), which could prevent landing gear extension by the free fall method, possibly resulting in loss of control of the airplane after landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0076, dated March 30, 2020 (''EASA AD 2020–0076'').

(h) Exceptions to EASA AD 2020–0076

(1) Where EASA AD 2020–0076 refers to its effective date or the effective date of EASA AD 2019–0063 or the effective date of EASA AD 2019–0164, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2020–0076 does not apply to this AD.

(3) Where paragraph (3) of EASA AD 2020–0076 specifies credit for certain tasks ''provided the continuity test specified in A330 AMM [Aircraft Maintenance Manual] task 32–33–00–710–809, or A340 AMM task 32–33–00–710–806, as applicable, is accomplished concurrently,'' this AD provides credit ''provided the continuity test is accomplished concurrently in accordance with the instructions of an FAA-approved maintenance or inspection program.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0076 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2020–0076 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2020–0076, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on

the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0484.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

Issued on June 23, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–14018 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112339–19]

RIN 1545–BP42

Credit for Carbon Oxide Sequestration; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on June 2, 2020. The proposed regulations regarding the credit for carbon oxide sequestration under section 45Q of the Internal Revenue Code (Code).

DATES: Written or electronic comments and requests for a public hearing are still being accepted and must be received by August 3, 2020.

ADDRESSES: Send submissions to Internal Revenue Service, CC:PA: LPD:PR (REG–112339–19), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submission of comments electronically is strongly suggested, as the ability to respond to mail may be delayed. It is recommended that comments and requests for a public hearing be submitted electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–112339–19).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Maggie Stehn of the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853; concerning submissions of comments and/or requests for a public hearing, Regina L. Johnson at (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 45Q of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–112339–19) contains errors that needs to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–112339–19) that was the subject of FR Doc.2020–11907, published at 85 FR 34050 (June 2, 2020), is corrected as follows:

1. On page 34058, third column, the ninth line of the fourth paragraph, the language ''date the'' is corrected to read ''date of''.

2. On page 34061, first column, the sixth line from the bottom from the first partial paragraph, the language ''three years'' is corrected to read ''five years.''

3. On page 34062, first column, the eleventh through the twelfth lines of the first full paragraph, the language ''section 45Q(f)(3)(B)'' is corrected to read ''new election''.

4. On page 34062, the first column, the fifth through the sixth lines from the bottom of the last paragraph, the language ''after the date of issuance of this proposed regulation'' is corrected to read ''after June 2, 2020.''.

5. On page 34062, second column, the thirteenth through the fourteenth lines from the bottom of the first full paragraph, the language ''before the date of issuance of this proposed regulation'' is corrected to read ''before June 2, 2020''.

6. On page 34062, third column, the sixth line from the bottom of the first full paragraph, the language ''F Federal'' is corrected to read ''Federal''.

7. On page 34063, third column, the second line from the bottom of the first full paragraph, the language ''serval'' is corrected to read ''several''.

Martin V. Franks,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2020–14033 Filed 6–29–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB95

Financial Factors in Selecting Plan Investments

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Proposed rule.

SUMMARY: The Department of Labor (Department) in this document proposes amendments to the ''Investment duties'' regulation under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to confirm that ERISA requires plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action.

DATES: Comments on the proposal must be submitted on or before July 30, 2020.

ADDRESSES: You may submit written comments, identified by RIN 1210–AB95 to either of the following addresses:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attention: Financial Factors in Selecting Plan Investments Proposed Regulation.

Instructions: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at *www.regulations.gov* and *www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Jason A. DeWitt, Office of Regulations and Interpretations, Employee Benefits

Security Administration, (202) 693–8500. This is not a toll-free number.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning ERISA and employee benefit plans may call the Employee Benefits Security Administration (EBSA) Toll-Free Hotline, at 1–866–444–EBSA (3272) or visit the Department of Labor's website (*www.dol.gov/ebsa*).

SUPPLEMENTARY INFORMATION:

A. Background and Purpose of Regulatory Action

Title I of the Employee Retirement Income Security Act of 1974 (ERISA) establishes minimum standards that govern the operation of private-sector employee benefit plans, including fiduciary responsibility rules. Section 404 of ERISA, in part, requires that plan fiduciaries act prudently and diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Sections 403(c) and 404(a) also require fiduciaries to act solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to their participants and beneficiaries and defraying reasonable expenses of administering the plan.

Courts have interpreted the exclusive purpose rule of ERISA section 404(a)(1)(A) to require fiduciaries to act with ''complete and undivided loyalty to the beneficiaries,'' [1] observing that their decisions must ''be made with an eye single to the interests of the participants and beneficiaries.'' [2] The Supreme Court as recently as 2014 unanimously held in the context of ERISA retirement plans that such interests must be understood to refer to ''*financial*'' rather than ''nonpecuniary'' benefits,[3] and federal appellate courts have described ERISA's fiduciary duties as ''the highest known to the law.'' [4] The Department's longstanding and consistent position, reiterated in multiple forms of sub-regulatory guidance, is that plan fiduciaries when making decisions on investments and investment courses of action must be focused solely on the plan's financial returns and the interests of plan participants and beneficiaries in their plan benefits must be paramount.

The Department has been asked periodically over the last 30 years to consider the application of these principles to pension plan investments selected because of the non-pecuniary benefits they may further, such as those relating to environmental, social, and corporate governance considerations. Various terms have been used to describe this and related investment behaviors, such as socially responsible investing, sustainable and responsible investing, environmental, social, and corporate governance (ESG) investing, impact investing, and economically targeted investing. The terms do not have a uniform meaning and the terminology is evolving.[5]

The Department's first comprehensive guidance addressing ESG investment issues was in Interpretive Bulletin 94–1 (IB 94–1).[6] There, the term used was ''economically targeted investments'' (ETIs). The Department's stated objective in issuing IB 94–1 was to state that ETI investments [7] are not inherently incompatible with ERISA's fiduciary obligations. The preamble to IB 94–1 explained that the requirements of sections 403 and 404 of ERISA do not prevent plan fiduciaries from investing plan assets in ETI investments if the investment has an expected rate of return commensurate to rates of return of available alternative investments with similar risk characteristics, and if the investment vehicle is otherwise an appropriate investment for the plan in terms of such factors as diversification and the investment policy of the plan. Some commentators have referred to this as the ''all things being equal'' test or the ''tie-breaker'' standard. The Department stated in the preamble to IB 94–1 that when competing investments serve the plan's economic interests equally well, plan fiduciaries can use such non-pecuniary considerations as the deciding factor for an investment decision.

The Department's sub-regulatory guidance then went through an iterative process. In 2008, the Department replaced IB 94–1 with Interpretive Bulletin 2008–01 (IB 2008–01).[8] In 2015, the Department replaced IB 2008–01 with Interpretive Bulletin 2015–01 (IB 2015–01),[9] which is codified at 29 CFR 2509.2015–01. Each Interpretive Bulletin has consistently stated that the paramount focus of plan fiduciaries must be the plan's financial returns and risk to participants and beneficiaries. The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, each Interpretive Bulletin, while restating the ''all things being equal'' test, also cautioned that fiduciaries violate ERISA if they accept reduced expected returns or greater risks to secure social, environmental, or other policy goals.

[1] *Donovan* v. *Mazzola,* 716 F.2d 1226, 1238 (9th Cir. 1983) (quoting *Freund* v. *Marshall & Ilsley Bank,* 485 F. Supp. 629, 639 (W.D. Wis. 1979)).

[2] *Donovan* v. *Bierwirth,* 680 F.2d 263,271 (2d. Cir. 1982).

[3] *Fifth Third Bancorp* v. *Dudenhoeffer,* 573 U.S. 409, 421 (2014) (the ''benefits'' to be pursued by ERISA fiduciaries as their ''exclusive purpose'' does not include ''nonpecuniary benefits'') (emphasis in original).

[4] See, *e.g., Tibble* v. *Edison Int'l,* 843 F.3d 1187, 1197 (9th Cir. 2016).

[5] For a concise history of the current ESG movement and the evolving terminology, see Max Schanzenbach & Robert Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee,* 72 Stan. L. Rev. 381, 392–97 (2020).

[6] 59 FR 32606 (June 23, 1994) (appeared in Code of Federal Regulations as 29 CFR 2509.94–1). Interpretive Bulletins are a form of sub-regulatory guidance that are published in the **Federal Register** and included in the Code of Federal Regulations. Prior to issuing IB 94–1, the Department had issued a number of letters concerning a fiduciary's ability to consider the non-pecuniary effects of an investment and granted a variety of prohibited transaction exemptions to both individual plans and pooled investment vehicles involving investments that produce non-pecuniary benefits. See Advisory Opinions 80–33A, 85–36A and 88–16A; Information Letters to Mr. George Cox, dated Jan. 16, 1981; to Mr. Theodore Groom, dated Jan. 16, 1981; to The Trustees of the Twin City Carpenters and Joiners Pension Plan, dated May 19, 1981; to Mr. William Chadwick, dated July 21, 1982; to Mr. Daniel O'Sullivan, dated Aug. 2, 1982; to Mr. Ralph Katz, dated Mar. 15, 1982; to Mr. William Ecklund, dated Dec. 18, 1985, and Jan. 16, 1986; to Mr. Reed Larson, dated July 14, 1986; to Mr. James Ray, dated July 8, 1988; to the Honorable Jack Kemp, dated Nov. 23, 1990; and to Mr. Stuart Cohen, dated May 14, 1993; PTE 76–1, part B, concerning construction loans by multiemployer plans; PTE 84–25, issued to the Pacific Coast Roofers Pension Plan; PTE 85–58, issued to the Northwestern Ohio Building Trades and Employer Construction Industry Investment Plan; PTE 87–20, issued to the Racine Construction Industry Pension Fund; PTE 87–70, issued to the Dayton Area Building and Construction Industry Investment Plan; PTE 88–96, issued to the Real Estate for American Labor A Balcor Group Trust; PTE 89–37, issued to the Union Bank; and PTE 93–16, issued to the Toledo Roofers Local No. 134 Pension Plan and Trust, et al. In addition, one of the first directors of the Department's benefits office authored an influential article on this topic in 1980. See Ian D. Lanoff, *The Social Investment of Private Pension Plan Assets: May It Be Done Lawfully Under ERISA?,* 31 Labor L.J. 387, 391–92 (1980) (stating that ''[t]he Labor Department has concluded that economic considerations are the only ones which can be taken into account in determining which investments are consistent with ERISA standards,'' and warning that fiduciaries who exclude investment options for non-economic reasons would be ''acting at their peril'').

[7] IB 94–1 used the terms ETI and economically targeted investments to broadly refer to any investment or investment course of action that is selected, in part, for its expected non-pecuniary benefits, apart from the investment return to the employee benefit plan investor.

[8] 73 FR 61734 (Oct. 17, 2008).

[9] 80 FR 65135 (Oct. 26, 2015).

The preamble to IB 2015–01 explained that if a fiduciary prudently determines that an investment is appropriate based solely on economic considerations, including those that may derive from ESG factors, the fiduciary may make the investment without regard to any collateral benefits the investment may also promote. In 2018, the Department clarified in Field Assistance Bulletin 2018–01 (FAB 2018–01) that, in making its observation in IB 2015–01, the Department merely recognized that there could be instances when ESG issues present material business risk or opportunities to companies that company officers and directors need to manage as part of the company's business plan and that qualified investment professionals would treat as economic considerations under generally accepted investment theories. In such situations, the issues are themselves appropriate economic considerations, and thus should be considered by a prudent fiduciary along with other relevant economic factors to evaluate the risk and return profiles of alternative investments. In other words, in these instances the factors are not ''tie-breakers,'' but pecuniary (or ''risk-return'') factors affecting the economic merits of the investment. The Department cautioned, however, that ''[t]o the extent ESG factors, in fact, involve business risks or opportunities that are properly treated as economic considerations themselves in evaluating alternative investments, the weight given to those factors should also be appropriate to the relative level of risk and return involved compared to other relevant economic factors.'' [10] The Department further emphasized in FAB 2018–01 that fiduciaries ''must not too readily treat ESG factors as economically relevant to the particular investment choices at issue when making a decision,'' as ''[i]t does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors.'' Rather, ERISA fiduciaries must always put first the economic interests of the plan in providing retirement benefits and ''[a] fiduciary's evaluation of the economics of an investment should be focused on financial factors that have a material effect on the return and risk of an investment based on appropriate investment horizons consistent with the plan's articulated funding and investment objectives.'' [11]

Available research and data show a steady upward trend in use of the term ESG among institutional asset managers, an increase in the array of ESG-focused investment vehicles available, a proliferation of ESG metrics, services, and ratings offered by third-party service providers, and an increase in asset flows into ESG funds. This trend has been underway for many years, but recent studies indicate the trajectory is accelerating. For example, according to Morningstar, the amount of assets invested in so-called sustainable funds in 2019 was nearly four times larger than in 2018.[12]

As ESG investing has increased, it has engendered important and substantial questions and inconsistencies, with numerous observers identifying a lack of precision and rigor in the ESG investment marketplace.[13] There is no consensus about what constitutes a genuine ESG investment, and ESG rating systems are often vague and inconsistent, despite featuring prominently in marketing efforts.[14] Moreover, ESG funds often come with higher fees, because additional investigation and monitoring are necessary to assess an investment from an ESG perspective.[15] Currently the examination priorities of the Securities and Exchange Commission (SEC) for 2020 include a particular interest in the accuracy and adequacy of disclosures provided by registered investment advisers offering clients new types or emerging investment strategies, such as strategies focused on sustainable and responsible investing, which incorporate ESG criteria.[16] The SEC also is soliciting public comment on the appropriate treatment for funds that use terms such as ''ESG'' in their name and whether these terms are likely to mislead investors.[17]

ESG investing raises heightened concerns under ERISA. Public companies and their investors may legitimately and properly pursue a broad range of objectives, subject to the disclosure requirements and other requirements of the securities laws. Pension plans covered by ERISA are statutorily-bound to a narrower objective: management with an ''eye single'' to maximizing the funds available to pay retirement benefits.[18] Providing a secure retirement for American workers is the paramount,

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[10] Field Assistance Bulletin No. 2018–01 (Apr. 23, 2018).

[11] Id.

[12] See Jon Hale, *The ESG Fund Universe Is Rapidly Expanding* (March 19, 2020), *www.morningstar.com/articles/972860/the-esg-fund-universe-is-rapidly-expanding.* This trend is most pronounced in Europe, where authorities are actively promoting consideration of ESG factors in investing. See, *e.g.,* Principles for Responsible Investment (PRI), *Fiduciary Duty in the 21st Century* (Oct. 2019), *www.unpri.org/download?ac=9792,* at 34–35 (quoting official from EU securities regulator that ''ESG is part of [their] core mandate.''); Emre Peker, *What Qualifies as a Green Investment? EU Sets Rules,* Wall Street Journal (Dec. 17, 2019), *www.wsj.com/articles/eu-seals-deal-to-create-regulatory-benchmark-for-green-finance-11576595600* (''European officials have been racing to set the global benchmark for green finance''); Principles for Responsible Investment, *Investor priorities for the EU Green Deal* (April 30, 2020), *www.unpri.org/sustainable-markets/investor-priorities-for-the-eu-green-deal/5710.article* (discussing proposal to require ESG data to be disclosed alongside traditional elements of corporate and financial reporting, including a core set of mandatory ESG key performance indicators).

[13] See, *e.g.,* Ogechukwu Ezeokoli et al., *Environmental, Social, and Governance (ESG) Investment Tools: A Review of the Current Field* (Dec. 2017), *www.dol.gov/sites/dolgov/files/OASP/legacy/files/ESG-Investment-Tools-Review-of-the-Current-Field.pdf,* at 11–13; *Scarlet Letters: Remarks of SEC Commissioner Hester M. Peirce before the American Enterprise Institute* (June 18, 2019), *www.sec.gov/news/speech/speech-peirce-061819;* Paul Brest, Ronald J. Gilson, & Mark A. Wolfson, *How Investors Can (and Can't) Create Social Value,* European Corporate Governance Institute, Law Working Paper No. 394 (Mar. 29, 2018), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3150347,* at 5.

[14] See, *e.g.,* Feifei Li & Ari Polychronopoulos, *What a Difference an ESG Ratings Provider Makes!* (Jan. 2020), *www.researchaffiliates.com/documents/770-what-a-difference-an-esg-ratings-provider-makes.pdf;* Florian Berg, Julian Kölbel, & Roberto Rigobon, *Aggregate Confusion: The Divergence of ESG Ratings* (Aug. 2019), MIT Sloan Research Paper No. 5822–19, *https://ssrn.com/abstract=3438533;* Schroders, *2018 Annual Sustainable Investment Report* (March 2019), *www.schroders.com/en/insights/economics/annual-sustainable-investment-report-2018,* at 22–23 (majority of passive ESG funds rely on a single third party ESG rating provider that ''typically emphasize tick-the-box policies and disclosure levels, data points unrelated to investment performance and/or backward-looking negative events with little predictive power'').

[15] See, *e.g.,* Principles for Responsible Investment, *How Can a Passive Investor Be a Responsible Investor?* (Aug. 2019), *www.unpri.org/download?ac=6729,* at 15 (ESG passive investing strategies likely result in higher fees compared to standard passive funds); Wayne Winegarden, *ESG Investing: An Evaluation of the Evidence,* Pacific Research Institute (May 2019), *www.pacificresearch.org/wp-content/uploads/2019/05/ESG_Funds_F_web.pdf,* at 11–12 (finding average expense ratio of 69 basis points for ESG funds compared to 9 basis points for broad-based S&P 500 index fund). In recent years, the asset-weighted expense ratio for ESG funds has decreased as ESG funds with lower expense ratios have attracted more fund flows than ESG funds with higher expense ratios. See Elisabeth Kashner, *ETF Fee War Hits ESG and Active Management* (Jan. 22, 2020), *https://insight.factset.com/etf-fee-war-hits-esg-and-active-management.*

[16] See Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission, *2020 Examination Priorities,* at 15, *www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf.*

[17] See Request for Comment on Fund Names, Release No. IC–33809 (Mar. 2, 2020) [85 FR 13221 (Mar. 6, 2020)].

[18] *Donovan* v. *Bierwirth,* supra, 680 F.2d at 271.

and eminently-worthy, ''social'' goal of ERISA plans; plan assets may not be enlisted in pursuit of other social or environmental objectives.

The Department is concerned, however, that the growing emphasis on ESG investing may be prompting ERISA plan fiduciaries to make investment decisions for purposes distinct from providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan. The Department is also concerned that some investment products may be marketed to ERISA fiduciaries on the basis of purported benefits and goals unrelated to financial performance.[19] For example, the Department understands that in the case of some ESG investment funds being offered to ERISA defined contribution plans, fund managers are representing that the fund is appropriate for ERISA plan investment platforms, while acknowledging in disclosure materials that the fund may perform differently or forgo certain opportunities, or accept different investment risks, in order to pursue the ESG objectives.

This proposed regulation is designed in part to make clear that ERISA plan fiduciaries may not invest in ESG vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of non-pecuniary objectives. The duty of loyalty—a bedrock principle of ERISA, with deep roots in the common law of trusts—requires those serving as fiduciaries to act with a single-minded focus on the interests of beneficiaries.[20] And the duty of prudence prevents a fiduciary from choosing an investment alternative that is financially less beneficial than an available alternative. These fiduciary standards are the same no matter the investment vehicle or category.

The Department believes that confusion with respect to these investment requirements persists, perhaps due in part to varied statements the Department has made on the subject over the years in sub-regulatory guidance. Accordingly, the Department intends, by this proposal, to reiterate and codify long-established principles of fiduciary standards for selecting and monitoring investments, and thus to provide clarity and certainty regarding the scope of fiduciary duties surrounding non-pecuniary issues. The Department's longstanding and consistent position, reiterated in multiple forms of guidance and based on the explicit language of ERISA itself, is that plan fiduciaries when making decisions on investments and investment courses of action must be focused solely on the plan's financial risks and returns, and the interests of plan participants and beneficiaries in their plan benefits must be paramount. The fundamental principle is that an ERISA fiduciary's evaluation of plan investments must be focused solely on economic considerations that have a material effect on the risk and return of an investment based on appropriate investment horizons, consistent with the plan's funding policy and investment policy objectives. The corollary principle is that ERISA fiduciaries must never sacrifice investment returns, take on additional investment risk, or pay higher fees to promote non-pecuniary benefits or goals.

As the Department has recognized in its prior guidance, there may be instances where factors that sometimes are considered without regard to their pecuniary import—such as environmental considerations—will present an economic business risk or opportunity that corporate officers, directors, and qualified investment professionals would appropriately treat as material economic considerations under generally accepted investment theories. For example, a company's improper disposal of hazardous waste would likely implicate business risks and opportunities, litigation exposure, and regulatory obligations. These would be appropriate economic considerations that qualified investment professionals would treat as material under generally accepted investment theories. Dysfunctional corporate governance can likewise present pecuniary risk that a qualified investment professional would appropriately consider on a fact-specific basis.

The purpose of this action is to set forth a regulatory structure to assist ERISA fiduciaries in navigating these ESG investment trends and to separate the legitimate use of risk-return factors from inappropriate investments that sacrifice investment return, increase costs, or assume additional investment risk to promote non-pecuniary benefits or objectives. The Department believes that providing further clarity on these issues in the form of a notice and comment regulation will help safeguard the interests of participants and beneficiaries in the plan benefits. This proposed rule is considered to be an Executive Order (E.O.) 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the proposal's economic analysis.

B. Provisions of the Proposed Rule

The proposed rule builds upon the core principles provided by the original ''Investment duties'' regulation on the issue of prudence under section 404(a)(1)(B) of ERISA, at 29 CFR 2550.404a–1, which the regulated community has been relying upon for more than 40 years.[21] For example, it remains the Department's view that (1) generally the relative riskiness of a specific investment or investment course of action does not render such investment or investment course of action either per se prudent or per se imprudent, and (2) the prudence of an investment decision should not be judged without regard to the role that the proposed investment or investment course of action plays within the overall plan portfolio. It also remains the Department's view that an investment reasonably designed—as part of the portfolio—to further the purposes of the plan, and that is made with appropriate consideration of the relevant facts and circumstances, should not be deemed to be imprudent merely because the investment, standing alone, would have a relatively high degree of risk. The Department also believes that appropriate consideration of an investment to further the purposes of the plan must include consideration of the characteristics of the investment itself and how it relates to the plan portfolio.

Thus, the proposed rule does not revise the requirements that the fiduciary give appropriate consideration to a number of factors concerning the composition of the plan portfolio with respect to diversification, the liquidity and current return of the portfolio relative to the anticipated cash flow needs of the plan, and the projected

[19] See, *e.g.,* James MacKintosh, *A User's Guide to the ESG Confusion,* Wall Street Journal (Nov. 12, 2019), *www.wsj.com/articles/a-users-guide-to-the-esg-confusion-11573563604* (''It's hard to move in the world of investment without being bombarded by sales pitches for running money based on 'ESG' ''); Mark Miller, *Bit by Bit, Socially Conscious Investors Are Influencing 401(k)'s,* New York Times (Sept. 27, 2019), *www.nytimes.com/2019/09/27/business/esg-401k-investing-retirement.html.*

[20] See Unif. Prudent Inv. Act § 5 cmt. (1995) (''The duty of loyalty is perhaps the most characteristic rule of trust law.''); see also Susan N. Gary, George G. Bogert, & George T. Bogert, *The Law of Trusts and Trustees: A Treatise Covering the Law Relating to Trusts and Allied Subjects Affecting Trust Creation and Administration* § 543 (3d ed. 2019) (quoting Justice Cardozo's classic statement in *Meinhard* v. *Salmon,* 249 N.Y. 458, 464 (1928) that ''[a] trustee is held to something stricter than morals of the market place. . . . Uncompromising rigidity has been the attitude of the courts of equity when petitioned to undermine the rule of undivided loyalty.'').

[21] 44 FR 37255 (June 26, 1979).

return of the portfolio relative to the funding objectives of the plan.

Rather, the proposed rule elaborates upon the core principles provided in the ''Investment duties'' regulation by making clear that fiduciaries may never subordinate the interests of plan participants and beneficiaries in their retirement income to non-pecuniary goals. Application of this corollary principle and the nature of the fiduciary's duties will, of course, depend on the facts and circumstances, which take into account the scope of investment duties the fiduciary knows or should know are relevant to the particular investment decision that a prudent person having similar duties and familiar with such matters would consider relevant.

Paragraph (a) of the proposed rule includes a restatement of the statutory language of the exclusive purpose requirements of ERISA section 404(a)(1)(A), in addition to the restatement in the existing regulation of the prudence duty of ERISA section 404(a)(1)(B). As stated above, the application of these requirements is context-specific.

Paragraph (b)(1) provides that the loyalty and prudence requirements of ERISA section 404(a)(1)(A) and 404(a)(1)(B) are satisfied in connection with an investment decision if, in addition to the requirements in the existing paragraph (b)(1), the fiduciary has selected investments and/or investment courses of action based solely on their pecuniary factors and not on the basis of any non-pecuniary factor. To round out the requirements of the duty of loyalty, the proposed rule includes in paragraph (b)(1) a requirement that fiduciaries not act to subordinate the interests of participants or beneficiaries to the fiduciary's or another's interests, and has otherwise complied with the duty of loyalty.

Paragraph (b)(2) of the proposal adds to the original regulation a requirement that appropriate consideration of an investment or investment course of action includes a requirement to compare investments or investment courses of action to other available investments or investment courses of action with regard to the factors listed in paragraphs (b)(2)(ii)(A) through (C). Facts and circumstances relevant to a comparison of investments or investment courses of action would include consideration of the level of diversification, degree of liquidity, and potential risk and return in comparison to available alternative investments. Clarifying that an investment or investment course of action must be compared to available alternatives is an important reminder that fiduciaries must not let non-pecuniary considerations draw them away from an alternative option that would provide better financial results. The paragraph also clarifies that the listed factors are not necessarily the only factors that need to be considered in order to emphasize that the paragraph is intended to specify the central obligations associated with the ''appropriate consideration'' requirement for proper management of an investment portfolio but should not be read to more broadly address the requirements in paragraph (b)(1)(ii) or paragraph (b)(1)(iii), or to otherwise modify the statutory standards set forth in section 404(a)(1)(A) or 404(a)(1)(B) of ERISA.

Paragraph (c) is entirely new and is intended to expound upon the consideration of pecuniary versus non-pecuniary factors in practice in both defined benefit and defined contribution plans.

Paragraph (c)(1) directly provides that a fiduciary's evaluation of an investment must be focused only on pecuniary factors. The paragraph explains that it is unlawful for a fiduciary to sacrifice return or accept additional risk to promote a public policy, political, or any other non-pecuniary goal. Paragraph (c)(1) is careful to acknowledge, however, that ESG factors and other similar considerations may be economic considerations, but only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories. The proposed rule emphasizes that such factors, if determined to be pecuniary, must be considered alongside other relevant economic factors to evaluate the risk and return profiles of alternative investments. The weight given to pecuniary ESG factors should reflect a prudent assessment of their impact on risk and return—that is, they cannot be disproportionately weighted. The paragraph further emphasizes that fiduciaries' consideration of ESG factors must be focused on their potential pecuniary elements by requiring fiduciaries to examine the level of diversification, degree of liquidity, and the potential risk-return profile of the investment in comparison with available alternative investments that would play a similar role in their plans' portfolios.

The Department's current guidance provides that if, after such an evaluation, alternative investments appear economically indistinguishable, a fiduciary may then, in effect, ''break the tie'' by relying on a non-pecuniary factor. The Department expects that true ties rarely, if ever, occur. To be sure, there are highly correlated investments and otherwise very similar ones. Seldom, however, will an ERISA fiduciary consider two investment funds, looking only at objective measures, and find the same target risk-return profile or benchmark, the same fee structure, the same performance history, same investment strategy, but a different underlying asset composition. Even then, moreover, those two alternatives would remain two different investments that may function differently in the overall context of the fund portfolio, and which going forward may perform differently based on external economic trends and developments.[22] The Department also recognizes that the ''all things being equal'' test could invite fiduciaries to find ties without a proper analysis, in order to justify the use of non-pecuniary factors in making an investment decision. Nonetheless, because ties may theoretically occur and the Department does not presently have sufficient evidence to say they do not, the Department proposes to retain the current guidance's ''all things being equal'' test. As explained below, the Department specifically requests comment on this test, including whether true ties exist and how fiduciaries may appropriately break ties.

Paragraph (c)(2) guides application of the ''all things being equal'' test by requiring fiduciaries to adequately document any such occurrences. If, after completing an appropriate evaluation, alternative investments appear economically indistinguishable, and one of the investments is selected on the basis of a non-pecuniary factor or factors such as environmental, social, and corporate governance considerations (notwithstanding the requirements of paragraph (b) and paragraph (c)(1)), the fiduciary must document the basis for concluding that a distinguishing factor could not be found and why the selected investment was chosen based on the purposes of the plan, diversification of investments, and the financial interests of plan participants and beneficiaries in receiving benefits from the plan. The Department believes this documentation requirement provides a safeguard against the risk that fiduciaries will improperly find economic equivalence and make decisions based on non-pecuniary

[22] See Schanzenbach & Sitkoff, *supra* note 5, at 410 (describing a hypothetical pair of truly identical investments as a ''unicorn'').

factors without a proper analysis and evaluation. As discussed in the Regulatory Impact Analysis below, the proposal may result in costs on fiduciaries whose current documentation and recordkeeping are insufficient to meet the new requirement, but, because the Department believes that truly economically indistinguishable alternatives are rare, the Department estimates that this requirement would not result in a substantial cost burden.

Paragraph (c)(3) describes the requirements for the prudent consideration of designated investment alternatives for defined contribution individual account plans that include one or more environmental, social, and corporate governance-oriented assessments or judgments in their investment mandates (*e.g.,* ''ESG investment mandates'') or that include these parameters in the fund name (hereinafter ''ESG-themed funds''). As the Department has previously explained, the standards set forth in sections 403 and 404 of ERISA apply to a fiduciary's selection of an investment fund as a plan investment or, in the case of an ERISA section 404(c) plan or other individual account plan, a designated investment alternative under the plan.

Paragraph (c)(3) does not, however, supersede paragraph (c)(1). Rather, paragraph (c)(3) includes provisions that are intended to apply those principles in the context of the selection of designated investment alternatives for participant-directed individual account plans. Thus, paragraph (c)(3) provides in general that, in such a case, a prudently selected, well managed, and properly diversified fund with ESG investment mandates could be added to the available investment options on a 401(k) plan platform without requiring the plan to forgo adding other non-ESG-themed investment options to the platform, consistent with the standards in ERISA sections 403 and 404. Adding such a fund is permissible only if: (i) The fiduciary uses only objective risk-return criteria, such as benchmarks, expense ratios, fund size, long-term investment returns, volatility measures, investment manager tenure, and mix of asset types (*e.g.,* equity, fixed income, money market funds, diversification of investment alternatives, which might include target date funds, value and growth styles, indexed and actively managed funds, balanced and equity segment funds, non-US equity and fixed income funds) in selecting and monitoring all investment alternatives for the plan, including any ESG investment alternatives; (ii) the fiduciary documents compliance with (i) above; and (iii) the environmental, social, corporate governance, or similarly oriented alternative is not added as, or as a component of, a qualified default investment alternative (QDIA as described in 29 CFR 2550.404c-5) that participants are automatically defaulted into as opposed to a fund added to the menu from which they are free to choose. Under paragraph (c)(3), a fiduciary could, for example, adopt an investment policy statement with prudent criteria for selection and retention of designated investment alternatives for an individual account plan that were based solely on pecuniary factors, and apply the criteria to all investment options in similar asset classes or funds in the same category, including potential ESG-themed funds.[23] While the proposal would allow a plan fiduciary to include a prudently selected ESG-themed investment alternative on a 401(k) plan investment platform if the fiduciary uses objective risk-return criteria in selecting and monitoring all investment alternatives for the plan, including any ESG investment alternatives, the Department has consistently expressed the view that fiduciaries who are willing to accept expected reduced returns or greater risks to secure non-pecuniary benefits are in violation of ERISA. Thus, fiduciaries considering investment alternatives for individual account plans should carefully review the prospectus or other investment disclosures for statements regarding ESG investment policies and investment approaches.[24]

The Department has not proposed to apply the provision in paragraph (c)(2) on ''economically indistinguishable alternative investments'' to the selection of investment options for individual account plans, but has rather included a distinct documentation requirement for such investment decisions in paragraph (c)(3)(ii). The Department believes that the concept of ''ties'' may have little relevance in the context of fiduciaries' selection of menu options for individual account plans, as such investment options are often chosen precisely for their varied characteristics and the range of choices they offer plan participants. As the Department explained in FAB 2018–01, in the case of an investment platform that allows participants and beneficiaries in an individual account plan an opportunity to choose from a broad range of investment alternatives, adding one or more funds to a platform, unlike fiduciary decisions to select individual investments for a plan, does not necessarily result in the plan forgoing the placement of one or more other non-ESG-themed investment alternatives on the platform. In this connection, however, the Department reiterates fiduciaries' obligation to comply with the objective standards set forth in paragraph (c)(3), and not to sacrifice returns or increase investment risk compared to other similar asset classes or funds in the same category in order to achieve non-pecuniary goals.

With respect to the proposed paragraph (c)(3)(ii) documentation requirement, fiduciaries already commonly document and maintain records about their investment choices, since that is a prudent practice and a potential shield from litigation risk. The proposed paragraph (c)(3)(ii) is intended simply to confirm that general fiduciary practice applies to the selection and monitoring of ESG investment options for individual account plans and to provide a safeguard against the risk that fiduciaries will select investment options based on non-pecuniary factors without a proper analysis and evaluation.

The Department requests comments on whether the language in paragraph (c)(3)(i) adequately reflects the same principles articulated in paragraph (c)(1). The Department also requests comments on whether it would be appropriate to expressly incorporate the provisions in paragraph (c)(2) on choosing among indistinguishable investment alternatives into paragraph (c)(3).

With respect to the QDIA provision in paragraph (c)(3)(iii) of the proposal, QDIAs are intended to help ensure that the retirement savings of plan participants who have not provided affirmative investment directions for their individual accounts, *e.g.,* because they may not be comfortable making such investment decisions, are put in a single investment capable of meeting the participant's long-term retirement savings needs. The relevant provisions of ERISA and the Department's implementing regulations encourage plans to offer QDIAs by providing fiduciaries with relief from liability for investment outcomes by deeming a participant to have exercised control over assets in his or her account if, in the absence of investment direction

[23] See, *e.g.,* ''The Morningstar Category Classifications (for portfolios available for sale in the United States),'' Morningstar Methodology Paper (April 29, 2016), *https://morningstardirect.morningstar.com/clientcomm/Morningstar_Categories_US_April_2016.pdf.*

[24] In that regard, fiduciaries should also be skeptical of ''ESG rating systems''—or any other rating system that seeks to measure, in whole or in part, the potential of an investment to achieve non-pecuniary goals—as a tool to select designated investment alternatives, or investments more generally.

from the participant, the plan fiduciary invests the assets in a QDIA.[25] Thus, selection of an investment fund as a QDIA is not analogous to merely offering participants an additional investment alternative as part of a prudently constructed lineup of investment alternatives from which participants may choose.

The Department does not believe that investment funds whose objectives include non-pecuniary goals—even if selected by fiduciaries only on the basis of objective risk-return criteria consistent with paragraph (c)(3)—should be the default investment option in an ERISA plan. ERISA is a statute whose overriding concern relevant here has always been providing a secure retirement for American workers and retirees, and it is inappropriate for participants to be defaulted into a retirement savings fund with other objectives absent their affirmative decision. Furthermore, in the QDIA context a fiduciary's decision to favor a particular environmental, social, corporate governance, or similarly oriented investment preference—and especially a decision to favor the fiduciary's own personal policy preferences—would raise questions about the fiduciary's compliance with ERISA's duty of loyalty. The QDIA regulation describes the attributes necessary for an investment fund, product, model portfolio, or managed account to be a QDIA. Each of the QDIA categories requires that the investment fund, product, model portfolio, or investment management service apply generally accepted investment theories, be diversified so as to minimize the risk of large losses, and be designed to provide varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures. It is already the case that a QDIA may not invest participant contributions directly in employer securities. Thus, this requirement in the proposal is intended to help ensure that the financial interests of plan participants and beneficiaries in retirement benefits remain paramount by removing ESG considerations in cases in which participant's retirement savings in individual accounts designed for participant direction are being automatically invested by a plan fiduciary.

Paragraph (d) repeats a paragraph in the current regulation which states that an investment manager appointed pursuant to the provisions of section 402(c)(3) of the Act to manage all or part of the assets of a plan may, for purposes of compliance with the provisions of paragraphs (b)(1) and (2) of the proposal, rely on, and act upon the basis of, information pertaining to the plan provided by or at the direction of the appointing fiduciary, if such information is provided for the stated purpose of assisting the manager in the performance of the manager's investment duties, and the manager does not know and has no reason to know that the information is incorrect.

Paragraph (e) is reserved for possible further clarification of the requirements under section 403 and 404 of ERISA with respect to fiduciary investment duties.

Paragraph (f) provides definitions. The term ''investment duties'' is unchanged from the current regulation and means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A)(i) or (ii) of the Act. The term ''investment course of action'' is amended to mean any series or program of investments or actions related to a fiduciary's performance of the fiduciary's investment duties, and the proposed rule adds an additional provision to specify that the definition includes the selection of an investment fund as a plan investment, or in the case of an individual account plan, a designated alternative under the plan. The term ''pecuniary factor'' means a factor that has a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy established pursuant to section 402(a)(1) of ERISA. Finally, the term ''plan'' is unchanged from the current regulation and means an employee benefit plan to which Title I of ERISA applies.

Paragraph (g) provides for the effective date for the proposed rule. Under paragraph (g), the proposed rule would be effective on a date sixty days after the date of the publication of the final rule. The Department requests comment on paragraph (g), including whether any transition or applicability date provisions should be added to for any of the provisions of the proposal.

Paragraph (h) provides that should a court of competent jurisdiction hold any provision of the rule invalid, such action will not affect any other provision. Including a severability clause provides clear guidance that the Department's intent is that any legal infirmity found with part of the proposed rule should not affect any other part of the proposed rule.

C. Request for Public Comments

The Department invites comments from interested persons on all facets of the proposed rule. Commenters are free to express their views not only on the specific provisions of the proposal as set forth in this document, but on any issues germane to the subject matter of the proposal. Comments should be submitted in accordance with the instructions at the beginning of this document. The Department believes that 30 days will afford interested persons an adequate amount of time to analyze the proposed rule and submit comments.

D. Regulatory Impact Analysis

This section analyzes the regulatory impact of a proposed regulation concerning the legal standard imposed by sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA with respect to investment decisions involving plan assets. In particular, it addresses the selection of a plan investment or, in the case of an ERISA section 404(c) plan or other individual account plan, a designated investment alternative under the plan. This proposed rule would address the limitations that sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA impose on fiduciaries' consideration of non-pecuniary benefits and goals, including environmental, social, and corporate governance and other similarly situated factors, in making investment decisions. Thus, the rule would eliminate confusion that plan fiduciaries may currently face in the marketplace and reiterate long-established fiduciary standards of prudence and loyalty for selecting and monitoring investments. While this rule is expected to benefit plans and participants overall, it would also impose some costs. For example, some plans would incur small documentation costs. The research and analysis used to select investments may

[25] Section 404(c)(5)(A) of ERISA provides that, for purposes of section 404(c)(1) of ERISA, a participant in an individual account plan shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant, are invested by the plan in accordance with regulations prescribed by the Secretary of Labor. On October 24, 2007, the Department published a final regulation implementing the provisions of section 404(c)(5) of ERISA. 29 CFR 2550.404c–5. A fiduciary of a plan that complies with the final regulation will not be liable for any loss, or by reason of any breach, that occurs as a result of investment in a qualified default investment alternative but the plan fiduciaries remain responsible for the prudent selection and monitoring of the QDIA. The regulation describes the types of investments that qualify as default investment alternatives under section 404(c)(5) of ERISA.

change, but such a change is unlikely to increase the overall cost. The transfer impacts, benefits, and costs associated with the proposed rule depends on the number of plan fiduciaries that are currently not following or misinterpreting the Department's existing sub-regulatory guidance. While the Department does not have sufficient data to estimate the number of such fiduciaries, the Department believes it is small, because most fiduciaries are operating in compliance with the Department's sub-regulatory guidance. The Department expects that the benefits of the rule would be appreciable for participants and beneficiaries covered by plans with noncompliant investment fiduciaries. If the Department's assumption regarding the number of noncompliant fiduciaries is understated, the proposed rule's transfer impacts, benefits, and costs would be proportionately higher; however, even in this instance, the Department believes that the rule's benefits would exceed its costs.

The Department has examined the effects of this rule as required by Executive Order 12866,[26] Executive Order 13563,[27] the Congressional Review Act,[28] Executive Order 13771,[29] the Paperwork Reduction Act of 1995,[30] the Regulatory Flexibility Act,[31] section 202 of the Unfunded Mandates Reform Act of 1995,[32] and Executive Order 13132.[33]

1. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is economically significant within the meaning of section 3(f)(1) of the Executive Order. Therefore, the Department has provided an assessment of the proposed rule's potential costs, benefits, and transfers, and OMB has reviewed this proposed rule pursuant to the Executive Order. Pursuant to the Congressional Review Act, OMB has designated this proposed rule as a ''major rule,'' as defined by 5 U.S.C. 804(2), because it would be likely to result in an annual effect on the economy of $100 million or more.

1.1. Introduction and Need for Regulation

Recently, there has been an increased emphasis in the marketplace on investments and investment courses of action that further non-pecuniary objectives, particularly what have been termed environmental, social, and corporate governance (ESG) investing.[34] The Department is concerned that the growing emphasis on ESG investing, and other non-pecuniary factors, may be prompting ERISA plan fiduciaries to make investment decisions for purposes distinct from their responsibility to provide benefits to participants and beneficiaries and defraying reasonable plan administration expenses. The Department is also concerned that some investment products may be marketed to ERISA fiduciaries on the basis of purported benefits and goals unrelated to financial performance.

The Department has periodically considered the application of ERISA's fiduciary rules to plan investment decisions that are based, in whole or part, on non-pecuniary factors, and not simply investment risks and expected returns. Confusion with respect to these factors persists, perhaps due in part to varied statements the Department has made on the subject over the years in sub-regulatory guidance. Accordingly, this proposed rule is necessary to interpret ERISA and provide clarity and certainty regarding the scope of fiduciary duties surrounding non-pecuniary issues. The Department believes that providing further clarity on these issues in the form of a notice and comment regulation will help safeguard the interests of participants and beneficiaries in their plan benefits.

1.2. Affected Entities

The proposal would affect certain ERISA-covered plans whose fiduciaries consider non-pecuniary factors when selecting investments and the participants in those plans. For investments that are not participant directed, defined benefit (DB) plans and defined contribution (DC) plans would be required to maintain records when different investments are ''economically indistinguishable,'' documenting specifically why the investments were determined to be indistinguishable and the selected investment was chosen based on the purposes of the plan and the financial interests of plan participants and beneficiaries in receiving benefits from the plan. DC individual account plans would be affected by the proposed rule if they offer ESG options among their designated investment alternatives. As discussed below, the best data available on this topic comes from surveys of ESG investing by plans.

ESG investing approaches may consider non-pecuniary matters.[35] Riedl and Smeets' research on individual investors in the Netherlands shows that financial motives play less of a role than social preferences and social signaling in explaining decisions to invest in ''socially responsible'' mutual funds.[36] The same research also presents survey evidence that most individual investors expect socially responsible investing mutual funds to have lower returns and higher fees than conventional mutual funds. In selecting investments, some

[26] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[27] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[28] 5 U.S.C. 804(2) (1996).

[29] Reducing Regulation and Controlling Regulatory Costs, 82 FR 9339 (Jan. 30, 2017).

[30] 44 U.S.C. 3506(c)(2)(A) (1995).

[31] 5 U.S.C. 601 *et seq.* (1980).

[32] 2 U.S.C. 1501 *et seq.* (1995).

[33] Federalism, 64 FR 153 (Aug. 4, 1999).

[34] See Jon Hale, *Sustainable Funds U.S. Landscape Report: Record Flows and Strong Fund Performance in 2019* (Feb. 14, 2020), *www.morningstar.com/lp/sustainable-funds-landscape-report.*

[35] See Schanzenbach & Sitkoff, *supra* note 5, at 389–90 (distinguishing between ''collateral benefits ESG'' investing—defined as ''ESG investing for moral or ethical reasons or to benefit a third party''—which is not permissible under ERISA, and ''risk-return ESG'' investing, which is).

[36] Arno Riedl & Paul Smeets, *Why Do Investors Hold Socially Responsible Mutual Funds?* 72 Journal of Finance 6 (2017). (This study included administrative data on trading of mutual funds by individual investors. They bought and sold funds only without the involvement of an intermediary.)

plans may use non-pecuniary factors that are not ESG factors, or are not perceived to be ESG factors. If survey respondents do not view them as ESG factors, these plans would not be identified by surveys.

According to a 2018 survey by the NEPC, approximately 12 percent of private pension plans have adopted ESG investing.[37] Another survey, conducted by the Callan Institute in 2019, found that about 19 percent of private sector pension plans consider ESG factors in investment decisions.[38] Both of these estimates are calculated from samples that include both DB and DC plans. Some DB plans that consider ESG factors would not be affected by the proposed rule because they focus only on the financial aspects of ESG factors, rather than on non-pecuniary objectives. In order to generate an upper-bound estimate of the costs; however, the Department assumes that 19 percent of DB plans would be affected by the proposed rule. This represents approximately 8,870 defined benefit plans.[39] The Department also assumes that 19 percent of DC plans with investments that are not participant directed would be affected; this represents an additional 18,400 plans.[40]

A small share of individual account plans offer at least one ESG-themed option among their investment alternatives. According to the Plan Sponsor Council of America, about 3 percent of 401(k) and/or profit sharing plans offered at least one ESG-themed investment option in 2018.[41] Vanguard's 2018 administrative data show that approximately nine percent of DC plans offered one or more ''socially responsible'' domestic equity fund options.[42] Considering these sources together, the Department assumes that six percent of individual account plans have at least one ESG-themed investment alternative and would be affected by the proposed rule. This represents 33,960 individual account plans with participant direction.[43] In terms of the actual utilization of ESG options, one survey indicates that about 0.1 percent of total DC plan assets are invested in ESG funds.[44] The Department seeks comments regarding its assumptions and additional information describing the prevalence of ESG investing or ESG investment options among ERISA plans, including their use as qualified default investment alternatives.

1.3. Benefits

The proposed rule would replace existing guidance on the use of ESG and similar factors in the selection of investments, including that fiduciaries must not base investment decisions on non-pecuniary factors unless alternative investment options are ''economically indistinguishable'' and such a conclusion is properly documented. The Department anticipates that the resulting benefits will be appreciable.

When fiduciaries weigh non-pecuniary considerations as required by this rule to select investments, some fiduciaries will select investments that are different from those they would have selected pre-rule. These selected investments' returns will generally tend to be higher over the long run. Also, as plans invest less in actively managed ESG mutual funds, they may instead select mutual funds with lower fees or passive index funds.

In this case, the societal resources freed for other uses due to lessened active management (minus potential upfront transition costs) would represent benefits of the rule. Furthermore, if some portion of the increased returns would be associated with ESG investments generating lower pre-fee returns than non-ESG investments (as regards economic impacts that can be internalized by parties conducting market transactions), then the new returns qualify as benefits of the rule; however, it would be important to track externalities, public goods, or other market failures that might lead to economic effects of the non-ESG activities being potentially less fully internalized than ESG activities' effects would, and thus generating costs to society on an ongoing basis. Finally, if some portion of the increased returns would be associated with transactions in which the opposite party experiences decreased returns of equal magnitude, then this portion of the rule's impact would, from a society-wide perspective, be appropriately categorized as a transfer (though it should be noted that, if there is evidence of wealth differing across the transaction parties, it would have implications for marginal utility of the assets).

To the extent that ESG investing sacrifices return to achieve non-pecuniary goals, it reduces participant and beneficiaries' retirement investment returns, thereby compromising a central purpose of ERISA. Given the increase in ESG investing, the Department is concerned that, without rulemaking, ESG investing will present a growing threat to ERISA fiduciary standards and, ultimately, to investment returns for plan participants and beneficiaries. For the plans and participants that would be affected by a reduced use of non-pecuniary factors, the benefits they would experience from higher investment returns, compounded over many years, could be considerable. The Department seeks information that could be used to quantify the increase in investment returns.

The Department also invites comments addressing the benefits that would be associated with the proposed rule.

1.4. Costs

This proposed rule provides guidance on the investment duties of a plan fiduciary. Under this proposed rule, plans that consider ESG and similar factors when choosing investments would be reminded that they may evaluate only the investments' relevant economic pecuniary factors to determine the risk and return profiles of the alternatives. It is the Department's view that many plan fiduciaries already undertake such evaluations, though many that consider ESG and similar factors may not be treating those as pecuniary factors within the risk-return evaluation. This proposal would not impair fiduciaries' appropriate consideration of ESG factors in circumstances where such consideration is material to the risk-return analysis and advances participants' interests in their retirement benefits. The Department does not intend to increase fiduciaries' burden of care attendant to such consideration; therefore, and no additional costs are estimated for this requirement. While fiduciaries may modify the research approach they use

[37] Brad Smith & Kelly Regan, *NEPC ESG Survey: A Profile of Corporate & Healthcare Plan Decisionmakers' Perspectives,* NEPC (Jul. 11, 2018), *https://cdn2.hubspot.net/hubfs/2529352/files/2018%2007%20NEPC%20ESG%20Survey%20Results%20.pdf?t=1532123276859.*

[38] *2019 ESG Survey,* Callan Institute (2019), *www.callan.com/wp-content/uploads/2019/09/2019–ESG-Survey.pdf.*

[39] DOL calculations are based on statistics from *Private Pension Plan Bulletin: Abstract of 2017 Form 5500 Annual Reports,* Employee Benefits Security Administration (Sep. 2019), (46,698 × 19% = 8,870 DB plans; 34,960,000 × 19% = 6,642,400, rounded to 6.6 million participants; $3,208,820,000,000 × 19% = $609,675,800,000, rounded to $610 billion in assets).

[40] Id. (96,860 × 19% = 18,403, rounded to 18,400 plans).

[41] *62nd Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2019).

[42] *How America Saves 2019,* Vanguard (June 2019), *https://institutional.vanguard.com/iam/pdf/HAS2019.pdf.*

[43] DOL calculations based on statistics from *Private Pension Plan Bulletin: Abstract of 2017 Form 5500 Annual Reports,* Employee Benefits Security Administration (Sept. 2019), ((565,969) * 6% = 33,958, rounded to 33,960 individual account plans).

[44] *62nd Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2019).

to select investments as a consequence of the proposed rule, the Department assumes this modification would not impose significant additional cost.

Some fiduciaries will select investments that are different from what they would have selected pre-rule. This can happen in different ways. Fiduciaries may realize that a current investment does not conform to the rule and decide to choose a more appropriate investment, or as part of a routine evaluation of the plan's investments or investment alternatives, fiduciaries may replace an investment or investment alternative. This could lead to some disruption, particularly for DC plans with participant direction. If a plan fiduciary removes an ESG fund as a designated investment alternative and does not replace it with a more appropriate ESG fund as a result of this proposed rule, participants invested in the ESG fund would have to pick a new fund that may not be comparable from their perspective. This could be disruptive, but similar disruptions occur when plan fiduciaries routinely change designated investment alternatives.

Furthermore, the proposed rule requires plan fiduciaries who select investments based on non-pecuniary factors to document why alternative investments are ''economically indistinguishable'' in terms of their expected risk and return characteristics. The Department believes that the likelihood that two investments will be ''economically indistinguishable'' is rare, and therefore the need to document such circumstances also will be rare.[45] The Department seeks data and comments on the frequency with which plans find two investments to be ''economically indistinguishable,'' and the process plan fiduciaries use in this situation. In those rare instances, the documentation requirement could be burdensome unless fiduciaries are already documenting such decisions.

Paragraph (c)(1) of the proposal provides that a fiduciary's evaluation of an investment must be focused on pecuniary factors. The paragraph explains that it is unlawful for a fiduciary to sacrifice return or accept additional risk to promote a public policy, political, or any other non-pecuniary goal. Paragraph (c)(2) provides that, if after completing an appropriate evaluation, alternative investments appear ''economically indistinguishable,'' and one of the investments is selected on the basis of a non-pecuniary factor or factors such as ESG considerations, the fiduciary must document the basis for concluding that a distinguishing factor could not be found and why the selected investment was chosen based on the purposes of the plan, diversification of investments, and the financial interests of plan participants and beneficiaries in receiving benefits from the plan. Thus, the rule may impose costs on fiduciaries whose current documentation and recordkeeping are insufficient to meet the new requirement. Because the Department concludes that truly ''economically indistinguishable'' alternatives are rare, the Department estimates that this requirement would not result in a substantial cost burden.

The Department has not proposed to apply the provision in paragraphs (c)(1) and (c)(2) of the proposal on ''economically indistinguishable'' alternative investments for the selection of investment options for individual account plans, but rather included a documentation requirement for such investment decisions in paragraph (c)(3)(ii). Therefore, individual account plan fiduciaries will need to document their selections of investment alternatives that include one or more ESG or similarly oriented assessments or judgments in their investment mandates or that include these parameters in the fund name.

The Department assumes that the documentation requirement in paragraph (c)(3) would impose little, if any, additional cost on individual account plan fiduciaries, because they already commonly document and maintain records about their investment choices as a best practice and potential shield from litigation risk. The Department proposes to include this requirement to confirm the need to document actions taken and to provide a safeguard against the risk that fiduciaries will select investment options based on non-pecuniary factors without a proper analysis and evaluation.

The PRA section below estimates the costs of the information collection. As required by the PRA, the PRA estimates encompass the entire burden of the proposed rule's information collection as opposed to the incremental costs discussed in the regulatory impact analysis. For this reason, the incremental costs of the proposed rule are estimated to be minimal, while the PRA cost estimates are larger.

The Department invites comments addressing the costs that would be associated with the proposed rule.

1.5. Transfers

There may be a transfer from mutual fund companies that offer ESG-themed mutual funds to competing mutual fund companies that offer other types of mutual funds. Companies offering ESG-themed mutual funds would have fewer customers since ERISA plans that currently offer ESG-themed mutual funds in their DC plans would no longer be able to offer them under the proposed rule, except for any funds that would be selected based on financial considerations alone. Often the same company will offer both mutual funds with an ESG theme and mutual funds without; there may be a transfer within the company from ESG mutual funds to other mutual funds.

Moreover, as noted previously, if some portion of rule-induced increases in returns would be associated with transactions in which the opposite party experiences decreased returns of equal magnitude, then this portion of the proposed rule's impact would, from a society-wide perspective, be appropriately categorized as a transfer.

1.6. Uncertainty

It is unclear how many plans use ESG and similar factors when selecting investments. Similarly unclear is the total asset value of investments that were selected in this manner. This is particularly true for DB plans. While there is some survey evidence on how many DB plans factor in ESG considerations, the surveys were based on small samples and yielded varying results. It also is not clear whether survey information about ESG investing accurately represents the prevalence of investing that incorporates non-pecuniary factors. For instance, some non-pecuniary investing concentrates on issues that are not thought of as ESG issues. At the same time, some investing takes account of environmental factors and corporate governance in a manner that focuses exclusively on the financial aspects of those considerations.

The proposed rule would replace the existing guidance on using non-pecuniary factors while selecting investments. It is very difficult to estimate how many plans have fiduciaries that are currently using non-pecuniary factors improperly while selecting investments. Such plans would experience significant effects from the proposed rule. It is also difficult to estimate the degree to which the use of non-pecuniary factors by ERISA fiduciaries, ESG or otherwise, would expand in the future absent this rulemaking, though trends in other countries suggest that pressure for such

[45] See Schanzenbach & Sitkoff, *supra* note 5, at 410 (describing a hypothetical pair of truly identical investments as a ''unicorn'').

expansion will only continue to increase.[46] However, based on current trends the Department believes that the use of non-pecuniary factors by ERISA plans is likely to increase moderately in the future without this rulemaking, and thus on a forward basis the benefits of the proposed rule will be appreciable.

1.7. Alternatives

The Department has considered alternatives to the proposed regulation. One alternative would prohibit plan fiduciaries from ever considering ESG or similar factors. This would address the Department's concerns that some plan fiduciaries may sacrifice return or increase investment risk to promote goals that are unrelated to the financial interests of the plan or its participants. However, that approach would prohibit the use of factors even when they have pecuniary consequences.

The Department also has considered prohibiting plan fiduciaries from basing investment decisions on non-pecuniary factors and not permitting the use of non-pecuniary factors where the alternative investment options are indistinguishable. But if the alternative investment options truly are ''economically indistinguishable,'' it is not clear what would be available to a plan fiduciary to base the decision on other than a non-pecuniary factor. Regardless, the Department believes that truly indistinguishable alternative investment options occur very rarely in practice, if at all. Accordingly, this proposed rule retains the ''all things being equal'' test from the Department's previous guidance with a specific requirement to document applications of that test. However, the Department requests comment regarding whether any variation of an ''all things being equal'' approach should be retained, or should be abandoned as inconsistent with the fiduciary duties of ERISA section 404. The Department also requests comment on how, assuming ''ties'' do occur, they might be broken based on different considerations than set forth in the proposed rule.

With respect to the requirements concerning individual account plans in paragraph (c)(3), the Department considered expressly incorporating paragraph (c)(1), which explains a fiduciary's obligation to only focus on pecuniary factors. The Department decided it was unnecessary to expressly incorporate paragraph (c)(1) into paragraph (c)(3), because the latter already requires fiduciaries to focus on only objective risk-return criteria. The Department requests comment on whether paragraph (c)(1) should be expressly incorporated in paragraph (c)(3).

Similarly, the Department considered whether to apply the documentation requirement for indistinguishable investments contained in paragraph (c)(2) of the proposal to fiduciaries' selection of designated investment alternatives for individual account plans. For the reasons set forth earlier in the preamble, Department decided not to carry that requirement into paragraph (c)(3). Rather, as explained above, investment options for individual account plans are often chosen precisely for their varied characteristics. Still, the proposed rule would require fiduciaries to document the selection and monitoring of ESG-themed funds as designated investment alternatives. The Department requests comment on whether it should apply the requirements in paragraph (c)(2) to the selection of ESG-themed funds for individual account plans.

The Department believes that the approach reflected in the proposal best reflects the statutory obligations of prudence and loyalty, appropriately ensures that fiduciaries' decisions will be guided by the financial interests of the plans and participants to whom they owe duties of prudence and loyalty, and is the easiest to apply and enforce. Nevertheless, the Department solicits comments on all alternatives, including any alternatives that the Department has not identified in this NPRM.

1.8. Conclusion

The Department believes that the proposed rule would provide clarity to fiduciaries in fulfilling their responsibilities by describing when and how fiduciaries can factor in ESG and similar considerations as they select and monitor investments, and when they may not.

While this proposed rule is expected to benefit plans and participants, some costs would be incurred as well. Some plans would have to modify their processes for selecting and monitoring investments. While some plans would need to document selections where the alternative investment options are indistinguishable, and individual account plans would need to document their decisions for selecting ESG-themed funds as designated investment alternatives, the Department does not expect these requirements to impose a significant increase in hourly burden or cost because the Department believes that truly indistinguishable alternative investment options should occur very rarely in practice, if at all and defined contribution plans are already documenting their decisions when selecting investment alternatives for their participant directed investment platforms.

Although the proposed rule would replace previous guidance, the Department believes that there is significant overlap; thus, this would not result in substantial benefits or costs. Overall, the proposed rule would assist fiduciaries in carrying out their responsibilities, while promoting the financial interests of current and future retirees.

2. Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[47] This helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the Financial Factors in Selecting Plan Investments ICR. To obtain a copy of the ICR, contact the PRA addressee shown below or go to *www.RegInfo.gov.*

The Department has submitted a copy of the proposed rule to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that address the following:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

[46] See generally Government Accountability Office Report No. 18–398, *Retirement Plan Investing: Clearer Information on Consideration of Environmental, Social, and Governance Factors Would Be Helpful* (May 2018), at 25–27; Principles for Responsible Investment, *Fiduciary Duty in the 21st Century, supra* note 12, at 21–22, 50–51.

[47] 44 U.S.C. 3506(c)(2)(A) (1995).

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Comments should be sent by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked ''Attention: Desk Officer for the Employee Benefits Security Administration.'' Comments can also be submitted by fax at 202–395–5806 (this is not a toll-free number), or by email at *OIRA_submission@omb.eop.gov.* OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

PRA Addresses: Address requests for copies of the ICR to G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210. The PRA Addressee may be reached by telephone, (202) 693–8410, or by fax, (202) 219–5333. These are not toll-free numbers. ICRs also are available at *www.RegInfo.gov* (*www.reginfo.gov/public/do/PRAMain*).

In prior guidance, the Department has encouraged plan fiduciaries to appropriately document their investment activities, and the Department believes it is common practice. The proposed rule expressly requires only that, where a plan fiduciary determines that alternative investments are ''economically indistinguishable,'' the fiduciary further document the basis for concluding that a distinguishing factor could not be found and the reason that the investment was selected based on non-pecuniary factors. Nevertheless, the Department believes that the likelihood that two investments options which are truly economically indistinguishable is very rare.

While the incremental burden of the proposed regulations is small, the full burden of the requirements will be included below to allow for evaluation of the requirements in the required information collection.

According to the most recent Form 5500 data, there are 8,870 DB plans and 18,400 DC plans with ESG investments that are not participant directed that could be affected by the proposed rule.[48] While the Department does not have data regarding the frequency of the rare event of alternatives being indistinguishable and requiring documentation, the Department models the burden using one percent of plans with ESG investments as needing to provide the documentation.

While DB plans may change investments at least annually, DC plans may do so less frequently. For this analysis, DC plans are assumed to review their service providers and investments about every three years. Therefore, the Department estimates that 89 DB plans and 61 DC plans with ESG investments that are not participant directed will encounter economically indistinguishable alternatives in a year.[49]

2.1. Maintain Documentation

The proposed rule requires ESG plan fiduciaries to maintain documentation if alternative investments appear to be ''economically indistinguishable.'' While much of the documentation needed to fulfill this requirement is generated in the normal course of business, plans may need additional time to ensure records are properly maintained and are up to the standard required by the Department. The Department estimates that plan fiduciaries and clerical staff will each expend, on average, 2 hours of labor to maintain the needed documentation. This results in an annual burden estimate of 600 hours, with an equivalent cost of $56,818 for DB plans and DC plans with ESG investments that are not participant directed.[50]

The proposal also would require individual account plan fiduciaries to document their selections of ESG-themed funds as designated investment alternatives for their participant-directed investment platforms. As explained above, fiduciaries selecting investment options for DC plans already commonly document and maintain records about their investment choices, since that is a best practice and a potential shield from litigation risk. Therefore, the Department assumes this documentation requirement will impose little, if any, additional cost. The requirement is included to confirm the need to document actions taken and to provide a safeguard against the risk that fiduciaries will select investment options based on non-pecuniary factors without a proper analysis and evaluation.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Financial Factors in Selecting Plan Investments.

OMB Control Number: 1210–NEW.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 11,470.

Estimated Number of Annual Responses: 11,470.

Frequency of Response: Occasionally.

Estimated Total Annual Burden Hours: 600.

Estimated Total Annual Burden Cost: $0.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[51] 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[52] and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis of the proposed rule.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[53] The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for

[48] DOL calculations based on statistics from U.S. Department of Labor, Employee Benefits Security Administration, ''Private Pension Plan Bulletin: Abstract of 2017 Form 5500 Annual Reports,'' (Sep. 2019), (46,698 DB plans × 19% = 8,870 DB plans; 96,860 DC Plans × 19% = 18,400 DC plans).

[49] 8,870 DB plans * 0.01 = 89 DB plans; 18,400 DC plans * 0.01 * 0.33 = 61 DC plans.

[50] The burden is estimated as follows: (8,870 DB plans * 0.01 * 2 hours) + (18,400 DC plans * 0.01 * 2 hours * 0.33) = 300 hours for both a plan fiduciary and clerical staff. A labor rate of $134.21 is used for a plan fiduciary and a labor rate of $55.14 for clerical staff ((8,870 DB plans * 0.01 * 2 * $134.21) + (18,400 DC plans * 0.01 * 2 hours* 0.33 * $134.21) + (8,870 DB plans * 0.01 * 2 * $55.14) + (18,400 DC plans * 0.01 * 2 hours* 0.33 * $55.14) = $56,818.)

[51] 5 U.S.C. 601 *et seq.* (1980).

[52] 5 U.S.C. 551 *et seq.* (1946).

[53] The Department consulted with the Small Business Administration before making this determination, as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c).

welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued—at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10—certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans. Such plans include unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements. Further, while some large employers may have small plans, in general small employers maintain small plans. Thus, EBSA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA)[54] pursuant to the Small Business Act.[55] Therefore, EBSA requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

The Department has determined that this proposed rule could have a significant impact on a substantial number of small entities. Therefore, the Department has prepared an Initial Regulatory Flexibility Analysis that is presented below.

3.1. Need for and Objectives of the Rule

The proposed rule confirms that ERISA requires plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action. This would help ensure that fiduciaries are protecting the financial interests of participants and beneficiaries.

3.2. Affected Small Entities

The proposed rule has documentation provisions that would affect small ERISA-covered plans, which have fewer than 100 participants. It also has some provisions about the improper use of non-pecuniary factors when plan fiduciaries select and monitor investments. These provisions would affect only plans and participants that are improperly incorporating non-pecuniary factors into their investment decisions. The proposed rule would affect small plans that have ESG-type investments that are not in compliance with the proposed regulation.

As discussed in the affected entities section above, surveys suggest that 19 percent of DB plans and DC plans with investments that are not participant directed and 6 percent of DC plans with participant directed individual accounts have ESG or ESG-themed investments and could be affected by the proposed rule. The distribution across plan size is not available in the surveys. This represents approximately 8,870 defined benefit plans and 52,360 DC plans. It should be noted that 83 percent of all DB plans and 88 percent of all DC are small plans.[56] Particularly for DB plans, it is likely that most plans with ESG investments are large. In terms of the actual utilization of ESG options, about 0.1 percent of total DC plan assets are invested in ESG funds.[57] One survey found that among 401(k) plans with fewer than 50 participants, approximately 1.7 percent offered an ESG option.[58]

A large majority of participants in small pension plans do not have an ESG fund in their portfolio. As previously mentioned, about 0.1 percent of total assets held by DC plans are invested in ESG funds.[59]

3.3. Impact of the Rule

While the rule is expected to affect small pension plans, it is not likely that there would be a significant economic impact on many of these plans. The proposed regulation provides guidance on how fiduciaries can comply with sections 404(a)(1)(A) and 404(a)(1)(B) of ERISA when investing plan assets. The Department believes most plans are already fulfilling the requirements in the course of following prior guidance. Plans would need to document selections of investments based on non-pecuniary factors where the alternative investment options are ''economically indistinguishable.'' The Department believes that truly ''economically indistinguishable'' alternative investment options should occur very rarely in practice, if at all. The Department estimates a cost of less than $380 per affected plan for plan fiduciaries and clerical professionals to fulfill the documentation requirement, see Table 1.

TABLE 1—DOCUMENTATION REQUIREMENT

Affected entity	Labor rate	Hours	Cost
Plans: Plan Fiduciary	$134.21	2	$268.42
Plans: Clerical workers	55.14	2	110.28
Total	....	....	378.70

Source: DOL calculations based on statistics from U.S. Department of Labor, Employee Benefits Security Administration, Private Pension Plan Bulletin: Abstract of 2017 Form 5500 Annual Reports, (September 2019).

Participant directed individual account plans will need to document their selections of ESG-themed funds as designated investment alternatives. As described above, fiduciaries in such plans already commonly document and maintain records about their choices of investment funds as designated investment alternatives, since that is the best practice and a potential shield from litigation risk. Therefore, the Department concludes that this documentation requirement would impose little, if any, additional cost. While the costs associated with the rule are small, its benefits could be significant for plans that are heavily invested in underperforming ESG funds and would be required to change their current ESG investments in response to the proposed rule. The Department does not have sufficient data to estimate the number of such plans and; therefore, welcomes comments and data that could help it make this determination.

[54] 13 CFR 121.201.

[55] 15 U.S.C. 631 *et seq.*

[56] DOL calculations based on statistics from U.S. Department of Labor, Employee Benefits Security Administration, ''Private Pension Plan Bulletin: Abstract of 2017 Form 5500 Annual Reports,'' (Sep. 2019).

[57] *62nd Annual Survey of Profit Sharing and 401(k) Plans,* Plan Sponsor Council of America (2019).

[58] Id.

[59] Id.

3.4. Alternatives

The Department considered the following alternatives to the proposed regulation: (1) Prohibiting plan fiduciaries from considering ESG or similar factors; (2) prohibiting plan fiduciaries from basing investment decisions on non-pecuniary factors and the use of non-pecuniary factors when the alternative investment options are economically indistinguishable; (3) requiring fiduciaries of individual account plans to comply with paragraph (c)(1) of the proposal, which explains a fiduciary's obligation to only focus on pecuniary factors; and (4) applying the documentation requirement for indistinguishable investments contained in paragraph (c)(2) of the proposal to fiduciaries' selection of designated investment alternatives for individual account plans. For a discussion of the Department's rationale for not adopting these alternatives, please see Section 1.7, Alternatives, above.

The Department believes that the approach taken in the proposal best reflects the statutory obligations of prudence and loyalty, appropriately ensures that fiduciaries' decisions would be guided by the financial interests of the plans and participants to whom they owe duties of prudence, and loyalty, and is the most efficient to apply and enforce. Nevertheless, the Department solicits comments on other alternatives, particularly those that would reduce the burden on small entities.

3.5. Duplicate, Overlapping, or Relevant Federal Rules

The Department is issuing this proposal under sections 404(a)(1)(A) and 404(a)(1)(B) of Title I under ERISA. The Department is charged with interpreting the ERISA provisions regarding the consideration of non-pecuniary factors in investment funds, and therefore, there are no duplicate, overlapping, or relevant Federal rules.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written statement assessing the effects of any federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any federal mandate that the Department expects would result in such expenditures by state, local, or tribal governments.

5. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.[60] Federal agencies promulgating regulations that have federalism implications must consult with state and local officials, and describe the extent of their consultation and the nature of the concerns of state and local officials in the preamble to the final rule.

In the Department's view, these proposed regulations would not have federalism implications because they would not have direct effects on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the states as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the proposed rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the states or the relationship or distribution of power between the national government and the states.

The Department welcomes input from states regarding this assessment.

Statutory Authority

This regulation is proposed pursuant to the authority in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012).

List of Subjects in 29 CFR Parts 2509 and 2550

Employee benefit plans, Employee Retirement Income Security Act, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and Recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Department is proposing to amend parts 2509 and 2550 of subchapters A and F of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER A—GENERAL

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

■ 1. The authority citation for part 2509 continues to read as follows:

Authority: 29 U.S.C. 1135. Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Sec. 2509.75–5 also issued under 29 U.S.C. 1002. Sec. 2509.95–1 also issued under sec. 625, Pub. L. 109–280, 120 Stat. 780.

§ 2509.2015–01 [Removed]

■ 2. Remove § 2509.2015–01.

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 3. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135 and Secretary of Labor's Order No. 1–2011, 77 FR 1088 (January 9, 2012). Sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 727 (2012). Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404a–1 also issued under sec. 657, Pub. L. 107–16, 115 Stat 38. Sec. 2550.404a–2 also issued under sec. 657 of Pub. L. 107–16, 115 Stat. 38. Sections 2550.404c–1 and 2550. 404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611, Pub. L. 109–280, 120 Stat. 780, 972. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

4. Revise § 2550.404a–1 to read as follows:

§ 2550.404a–1 Investment duties.

(a) *In general.* Section 404(a)(1)(A) and 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act) provide, in part, that a fiduciary shall discharge that person's duties with respect to the plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of

[60] Federalism, 64 FR 153 (Aug. 4, 1999).

administering the plan, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) *Investment duties.* (1) With regard to the consideration of an investment or investment course of action taken by a fiduciary of an employee benefit plan pursuant to the fiduciary's investment duties, the requirements of section 404(a)(1)(A) and 404(a)(1)(B) of the Act set forth in paragraph (a) of this section are satisfied if the fiduciary:

(i) Has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties;

(ii) Has evaluated investments and investment courses of action based solely on pecuniary factors that have a material effect on the return and risk of an investment based on appropriate investment horizons and the plan's articulated funding and investment objectives insofar as such objectives are consistent with the provisions of Title I of ERISA;

(iii) Has not subordinated the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to unrelated objectives, or sacrificed investment return or taken on additional investment risk to promote goals unrelated to those financial interests of the plan's participants and beneficiaries or the purposes of the plan;

(iv) Has not otherwise acted to subordinate the interests of the participants and beneficiaries to the fiduciary's or another's interests and has otherwise complied with the duty of loyalty; and

(v) Has acted accordingly.

(2) For purposes of paragraph (b)(1) of this section, ''appropriate consideration'' shall include, but is not necessarily limited to,

(i) A determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action, and

(ii) Consideration of the following factors as they relate to such portion of the portfolio:

(A) The composition of the portfolio with regard to diversification;

(B) The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan;

(C) The projected return of the portfolio relative to the funding objectives of the plan; and

(D) How the investment or investment course of action compares to available alternative investments or investment courses of action with regard to the factors listed in paragraphs (b)(2)(ii)(A) through (C) of this section.

(c)(1) *Consideration of Pecuniary vs. Non-Pecuniary Factors.* A fiduciary's evaluation of an investment must be focused only on pecuniary factors. Plan fiduciaries are not permitted to sacrifice investment return or take on additional investment risk to promote non-pecuniary benefits or any other non-pecuniary goals. Environmental, social, corporate governance, or other similarly oriented considerations are pecuniary factors only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories. The weight given to those factors should appropriately reflect a prudent assessment of their impact on risk and return. Fiduciaries considering environmental, social, corporate governance, or other similarly oriented factors as pecuniary factors are also required to examine the level of diversification, degree of liquidity, and the potential risk-return in comparison with other available alternative investments that would play a similar role in their plans' portfolios.

(2) *Economically indistinguishable alternative investments.* When alternative investments are determined to be economically indistinguishable even after conducting the evaluation described in paragraph (c)(1), and one of the investments is selected on the basis of a non-pecuniary factor or factors such as environmental, social, or corporate governance considerations (notwithstanding the requirements of paragraph (b) and paragraph (c)(1)), the fiduciary should document specifically why the investments were determined to be indistinguishable and document why the selected investment was chosen based on the purposes of the plan, diversification of investments, and the interests of plan participants and beneficiaries in receiving benefits from the plan.

(3) *Investment Alternatives for Individual Account Plans.* The standards set forth in sections 403 and 404 of ERISA and paragraphs (b)(1) and (b)(2) of this regulation apply to a fiduciary's selection of an investment fund as a designated investment alternative in an individual account plan. In the case of investment platforms for defined contribution individual account plans, including platforms with bundled administrative and investment services, that allow plan participants and beneficiaries to choose from a broad range of investment alternatives as defined in 29 CFR 2550.404c-1(b)(3), a fiduciary's addition (for the platform) of one or more prudently selected, well managed, and properly diversified investment alternatives that include one or more environmental, social, corporate governance, or similarly oriented assessments or judgments in their investment mandates, or that include these parameters in the fund name, would not violate the standards in section 403 and 404 provided:

(i) The fiduciary uses only objective risk-return criteria, such as benchmarks, expense ratios, fund size, long-term investment returns, volatility measures, investment manager investment philosophy and experience, and mix of asset types (*e.g.,* equity, fixed income, money market funds, diversification of investment alternatives, which might include target date funds, value and growth styles, indexed and actively managed funds, balanced and equity segment funds, non-U.S. equity and fixed income funds), in selecting and monitoring all investment alternatives for the plan including any environmental, social, corporate governance, or similarly oriented investment alternatives;

(ii) the fiduciary documents its selection and monitoring of the investment in accordance with paragraph (c)(3)(i) of this section; and

(iii) the environmental, social, corporate governance, or similarly oriented investment mandate alternative is not added as, or as a component of, a qualified default investment alternative described in 29 CFR 2550.404c-5.

(d) An investment manager appointed, pursuant to the provisions of section 402(c)(3) of the Act, to manage all or part of the assets of a plan, may, for purposes of compliance with the provisions of paragraphs (b)(1) and (2) of this section, rely on, and act upon the basis of, information pertaining to the plan provided by or at the direction of the appointing fiduciary, if –

(1) Such information is provided for the stated purpose of assisting the manager in the performance of the manager's investment duties, and

(2) The manager does not know and has no reason to know that the information is incorrect.

(e) [Reserved]

(f) *Definitions.* For purposes of this section:

(1) The term ''*investment duties*'' means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A)(i) or (ii) of the Act.

(2) The term ''*investment course of action*'' means any series or program of investments or actions related to a fiduciary's performance of the fiduciary's investment duties, and includes the selection of an investment fund as a plan investment, or in the case of an individual account plan, a designated alternative under the plan.

(3) The term ''*pecuniary factor*'' means a factor that has a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy established pursuant to section 402(a)(1) of ERISA.

(4) The term ''*plan*'' means an employee benefit plan to which Title I of the Act applies.

(g) *Effective date.* This section shall be effective on [60 days after date of publication of final rule].

(h) *Severability.* Should a court of competent jurisdiction hold any provision(s) of this subpart to be invalid, such action will not affect any other provision of this subpart.

Signed at Washington, DC, June 22, 2020.

Jeanne Wilson,

Acting Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2020–13705 Filed 6–26–20; 4:15 pm]

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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2020–10]

Modernizing Recordation of Notices of Termination

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking; notification of inquiry; extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline for the submission of written comments in response to its June 3, 2020, notice of proposed rulemaking and notification of inquiry regarding recordation of notices of termination.

DATES: The comment period for the proposed rule published June 3, 2020, at 85 FR 34150, is extended. Written comments must be received no later than 11:59 p.m. Eastern Time on August 5, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/termination-modernization/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, *regans@copyright.gov;* Kevin R. Amer, Deputy General Counsel, *kamer@copyright.gov;* or Nicholas R. Bartelt, Attorney-Advisor, *niba@copyright.gov.* They can be reached by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION: On June 3, 2020, the U.S. Copyright Office issued a notice of proposed rulemaking and notification of inquiry (the ''NPRM'') regarding recordation of notices of termination.[1] The NPRM requested public comments on proposed updates to the regulatory framework for notices of termination before features permitting electronic submission of notices are developed for the online recordation system. The Office also solicited comments on two additional subjects: (1) Whether the Office should develop an optional form or template to assist remitters in creating and serving notices of termination; and (2) whether the Office should consider regulatory updates to address concerns about third-party agents failing to properly serve and file notices on behalf of authors.

To ensure that members of the public have sufficient time to comment, and to ensure that the Office has the benefit of a complete record, the Office is extending the deadline for submission of comments to 11:59 p.m. Eastern Time on August 5, 2020.

Dated: June 26, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–14208 Filed 6–29–20; 8:45 am]

BILLING CODE 1410–30–P

[1] 85 FR 34150 (June 3, 2020).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2019–0616; FRL–10010–57-Region 6]

Air Plan Approval; Arkansas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Arkansas (State) for the 2015 Ozone (O_3) National Ambient Air Quality Standards (NAAQS). This submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2015 O_3 NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Arkansas SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS. We are also proposing to approve changes to the State's regulations to bring the State's rule up to date and consistent with the 2015 O_3 NAAQS.

DATES: Written comments must be received on or before July 30, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2019–0616, at *http://www.regulations.gov* or via email *todd.robert@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) 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. 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). For additional submission methods, please contact Robert M. Todd, (214) 665–2156, *todd.robert@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The docket index and publicly available docket materials for this action are available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to file size or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, EPA Region 6 Office, Infrastructure & Ozone Section, 214–665–2156, *todd.robert@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: In this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

Below is a short discussion of the background on the 2015 O_3 NAAQS and the SIP revisions addressed in this action. For more information, please see the Technical Support Document (TSD) in the docket for this action.[1]

Following a periodic review of the 2008 NAAQS for O_3, EPA revised the primary and secondary O_3 NAAQS to 0.070 ppm (80 FR 65291, October 26, 2015).[2] The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare.[3]

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an ''infrastructure SIP'' or ''i-SIP''. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has provided guidance on the application of infrastructure provisions in SIP submissions and applied such guidance in regional actions on infrastructure submissions.[4] We are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[5] The EPA has other CAA authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

Each state must submit an i-SIP within three years after the promulgation of a new or revised NAAQS showing how it meets the elements of section 110(a)(2) of the CAA. This section of the CAA includes a list of specific elements necessary for a state's air quality program. On October 4, 2019, the Governor of Arkansas made one submission to address the 2015 NAAQS for O_3.[6] The submittal addressed CAA sections 110(a)(2)(A) through (M).

We are proposing that the Arkansas SIP meets the requirements in CAA section 110(a)(1) and parts of section 110(a)(2). Specifically, we are proposing to approve the Arkansas i-SIP as it demonstrates compliance with CAA sections 110(a)(1) and 110(a)(2)(A) through (C) and (E) through (M). We are also proposing that Arkansas' i-SIP demonstrates compliance with CAA section 110(a)(2)(D)(i)(II), Interference with Prevention of Significant Deterioration (often referred to as prong 3) and CAA section 110(a)(2)(D)(ii), Interstate Pollution Abatement (which refers to CAA section 126) and International Air Pollution (which refers to CAA section 115). The remaining portions of the October 4, 2019, submittal, addressing CAA section 110(a)(2)(D)(i)(I), often referred to as interstate transport prongs 1 and 2, and CAA section 110(a)(2)(D)(i)(II), often referred to as interstate transport prong 4, will be addressed in separate, subsequent actions.[7] A copy of the State's submittal is provided in the docket for this proposed rulemaking.

Also, on September 27, 2019, after due opportunity for public notice and comment and following all the state's required administrative procedures the Arkansas Pollution Control and Ecology Commission (APC&EC) adopted changes to Regulation 19 (Regulations of the Arkansas Plan for Air Pollution Control). Regulation 19 changes were made to Chapter 2, Definitions and Appendix B, National Ambient Air Quality Standards List, that bring the state's rules up to date and consistent with the 2015 O_3 NAAQS. These changes were included in the i-SIP submittal. We are proposing to approve these changes into the Arkansas SIP.

[1] The TSD for this action can be accessed through *www.regulations.gov* (Docket No. EPA–R06–OAR–2019–0616).

[2] Additional information on the history of the NAAQS for ozone is available at *https://www.epa.gov/ground-level-ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs.*

[3] Information on ozone formation and health effects is available at *https://www.epa.gov/ozonepollution.*

[4] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at *https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on Louisiana's infrastructure SIP to address the 2006 $PM_{2.5}$, 2008 PB, 2008 O_3, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS (81 FR 68322 (October 4, 2016)).

[5] See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933 (Aug. 30, 2018).

[6] Additional information, including the history of the priority pollutants, their levels, the forms of the standard and the determination of compliance; EPA's approach for reviewing the i-SIP submittal and EPA's evaluation; the statute and regulatory citations in the Arkansas SIP specific to the review of this i-SIP, applicable CAA and EPA regulatory citations, **Federal Register** citations for the Arkansas SIP approvals; Arkansas minor New Source Review program and EPA approval activities, and Arkansas' Prevention of Significant Deterioration program can be found in the TSD for this action.

[7] In an earlier action we proposed to approve the Arkansas submittal for interstate transport prong 4 (visibility protection). See 85 FR 14847 (March 16, 2020).

II. EPA's Evaluation of the Arkansas 2015 O3 NAAQS Submission

Below is a summary of our evaluation of the October 4, 2019, Arkansas submittal for each element of CAA section 110(a)(2) that we are proposing to approve.[8]

(A). Emission limits and other control measures: The SIP must include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.[9]

The State provided information to show that Arkansas' SIP contains enforceable emission limitations and other control measures requirements. The relevant provisions to address such requirements are included in the Arkansas Water and Air Pollution Control Act (AWAPCA), Arkansas Code Annotated (''Ark. Code Ann.'') section 8–4–101 *et seq.,* and those provisions of the APC&EC Regulation 19, codified in 40 CFR 52.170. The regulations in APC&EC Regulation 19 have been duly adopted by the State and where these provisions relate to CAA section 110 requirements, SIP revisions have been submitted to and approved by EPA. The EPA-approved SIP revisions are codified at 40 CFR part 52, subpart E. Arkansas has an EPA-approved air permitting program for both major and minor facilities, which ensures that all applicable requirements are included in any applicable facility permit. A detailed list of the applicable authorities and regulations is provided in the TSD in the docket to this action. Arkansas' SIP contains enforceable emission limits and other control measures, which are also in the federally enforceable SIP.

(B) Ambient air quality monitoring/data system: The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of ambient air quality data, and providing such data to EPA upon request.

The SIP-approved APC&EC Regulation 19, Chapter 3 allows the Arkansas Department of Environmental Quality (ADEQ) to collect air monitoring data, quality-assure the results, and report the data. Arkansas' Statewide Air Quality Surveillance Network was approved by EPA on August 6, 1981 (46 FR 40005) and consists of stations that measure ambient concentrations of the six criteria pollutants. ADEQ maintains and operates a monitoring network to measure levels of ozone, as well as other pollutants, in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. ADEQ submits all required data to us, following the EPA regulations. The monitoring network was approved into the SIP and it undergoes annual review by EPA.[10] In addition, ADEQ submits an assessment of its monitoring network every five years, as required by EPA rules. The most recent of these annual monitoring network assessments was submitted by ADEQ and approved by us on November 12, 2019. The most recent of the five-year monitoring assessments was submitted by ADEQ and approved by us on July 22, 2016. The ADEQ website provides the monitor locations and posts past and current concentrations of criteria pollutants measured by the State's network of monitors.[11]

(C) Program for enforcement of control measures: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in CAA section 110(a)(2)(A); (2) a minor new source review (NSR) program for the regulation of new and modified minor stationary sources and minor modifications of new major stationary sources as necessary to protect the applicable NAAQS; and (3) a major stationary source permit program to meet the prevention of significant deterioration (PSD) permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question). Each of these elements is described in more detail in the TSD for this action.

(1) Enforcement of SIP measures: The state must provide a program for enforcement of the necessary control measures described in subparagraph (A).

As discussed previously, the AWAPCA provides the ADEQ with authority to enforce the State's environmental quality rules. The ADEQ established rules governing emissions of the NAAQS and their precursors throughout the state, and these rules are in the federally-enforceable SIP. The rules in Regulation 19, Chapters 1, 3–5, 7–10, 13 and 14; Regulation 26, Chapters 3 and Regulation 31, Chapters 1, 3, 4 and 8 include allowable rates, compliance, control plan requirements, monitoring and testing requirements, recordkeeping and reporting requirements, and control schedules. These rules set the boundaries beyond which regulated entities in Arkansas can expect enforcement action.

To meet the CAA requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved—including a permit program as required by Parts C and D—generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 2015 O_3 NAAQS. As explained in section I above and footnote 5, we are not evaluating nonattainment-related provisions—such as the Nonattainment NSR program required by part D in section 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these NAAQS—because these submittals are required beyond the date (3 years from NAAQS promulgation) that CAA section 110 infrastructure submittals are required.

(2) Minor New Source Review (NSR). The SIP is required to include measures to regulate construction and modification of minor stationary sources and minor modifications to major stationary sources to protect the NAAQS. The Arkansas minor NSR permitting requirements are approved as part of the SIP.[12] Arkansas' minor

[8] A detailed discussion of our evaluation can be found in the TSD for this action.

[9] The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 Ozone NAAQS. Those SIP provisions are due as part of each state's attainment plan and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

[10] A copy of the 2019 Annual Air Monitoring Network Plan and our approval letter, as well as the most recent five-year assessment and approval letter, are included in the docket for this proposed rulemaking.

[11] *https://www.adeq.state.ar.us/techsvs/air_chem_lab/ozone_monitors.aspx?desktop_version=y*

[12] EPA is not proposing in this action to approve or disapprove the existing Arkansas minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs for EPA to approve the infrastructure SIP for element C, program for enforcement of control measures (*e.g.,* 76 FR 41076–41079). The statutory requirements of section 110(a)(2)(C) of the Act provide for considerable flexibility in designing minor NSR programs. See the TSD for more information.

source permitting requirements are contained at APC&EC Regulation 19, Chapter 4 and revisions to the rule were previously approved by EPA at 72 FR 18394 (April 12, 2007) and 83 FR 30553 (June 29, 2018). The SIP continues to require preconstruction permits for minor sources and minor modifications.

(3) PSD permit program for major stationary sources. The Arkansas PSD portion of the SIP covers all NSR regulated pollutants including the requirements for the 2015 O_3 NAAQS. See the TSD to this proposal for a full history on the state's PSD permitting program.

(D) Interstate and international transport: The requirements for interstate transport of O_3 emissions are that the SIP contain adequate provisions prohibiting Arkansas emissions which will (1) Contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA section 110(a)(2)(D)(i)) in other states. As noted earlier, EPA often refers to these four requirements within CAA section 110(a)(2)(D)(i) as prongs or sub-elements. We are not evaluating prongs 1, 2, and 4 in this rulemaking action, but will address them in separate actions. However, we are proposing to approve prong 3 of CAA section 110(a)(2)(D)(i), because the Arkansas has a SIP-approved PSD permitting program that regulates all NSR pollutants, and thus, prevents interference with measures required to prevent significant deterioration in other states.

Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include adequate provisions to ensure compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement. Section 115 of the Act addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. There are no final findings by the EPA that Arkansas air emissions affect other countries. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. The Arkansas SIP requires that each major proposed new or modified source provide such notification. The State also has no pending obligations under CAA section 126. See the TSD for more detail.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. As discussed in previously in the discussion of elements (A) and (E), the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments are addressed. The i-SIP submission for the 2015 O_3 NAAQS describes the SIP regulations governing the various functions of personnel within the ADEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program. With respect to necessary assurances, and the requirement to address funding, Arkansas has authority to establish and collect fees for operation of the state's permitting programs. Ark. Code Ann. section 8–1–103(1)(A) grants APC&EC the authority to establish, by regulation, reasonable fees for initial issuance, annual review, and modification of permits. Under Ark. Code Ann. section 8–1–103(3), ADEQ is authorized to collect the fees established by APC&EC and shall deny the issuance of an initial permit, a renewal permit, or a modification permit if and when a facility fails or refuses to pay the fees after reasonable notice. APC&EC Regulation 9, Fee Regulation, Chapter 5 Air Permit Fees, contains the air permit fees applicable to non-part 70 permits, part 70 permits and general permits. More specific information on permitting fees is provided in the TSD.

With respect to authority and personnel, Ark. Code Ann. section 8–1–202(b)(2)(D) states that the Director of ADEQ's duties include the day-to-day administration of all activities that the Department is empowered by law to perform, including, but not limited to, the employment and supervision of such technical, legal, and administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested with ADEQ. The AWAPCA provides the ADEQ adequate authority, in part ''to administer and enforce all laws and regulations relating to pollution of the air.'' Ark. Code Ann. section 8–4–311(7). APC&EC Regulation 19.301 gives ADEQ the responsibility of meeting all applicable regulations and requirements contained in the CAA, as amended, if any area of the state is determined to be in violation of the NAAQS. APC&EC Regulation 19.410 gives ADEQ the authority to revoke, suspend, or modify any permit for cause. For further details, please refer to the TSD.

CAA section 110(a)(2)(E)(ii) requires that the State's SIP comply with CAA section 128, which requires: (1) That the majority of the members of the state body that approves permits or enforcement orders do not derive any significant portions of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. In 1982, the EPA approved the State's SIP submittal to demonstrate compliance of the SIP with Section 128 of the CAA. 47 FR 19136 (May 4, 1982). The submittal cited AWAPCA section 82–1901 as demonstrating compliance with CAA section 128(a)(1) and cited Arkansas Code of Ethics Law Act 570 of 1979, Section 3: Use of Public Office to Obtain Special Privilege Prohibited: Section 4: Use and Disclosure of Information—Acquired by Reason of Office Activities Requiring Disclosure; Section 5: Requirement to File Statement and Section 6: Statements Period Retained Public Access Signature Required.

Under APC&EC Regulation 8.202, the Director or the Director's delegate shall issue all permits with nothing in APC&EC Regulation 8 being construed to authorize APC&EC to issue a permit, including the power to reverse or affirm a permitting decision by the Director. Under Ark. Code Ann. section 21–8–1001, no member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence or attempt to influence an official decision if the member has pecuniary interest in the matter under consideration by the board, commission, or entity. In addition, no member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member. As required by the CAA, the SIP stipulates that any board or body, which approves permits or enforcement orders, must have at least a majority of members who represent the public interest and do not derive any ''significant portion'' of their income from persons subject to permits and enforcement orders or who appear before the board on issues related to the CAA. The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest. While the ADEQ has no board or commission, the ADEQ submitted a letter dated January 19, 2012, that clarified that the Director of the ADEQ is considered the ''the head of an executive agency with similar powers,'' and must meet the requirement to adequately disclose any potential conflicts of interest. The requirements of CAA section 110(a)(2)(E)(iii) concerning local governments or other entities, are not applicable to Arkansas because it does not rely on local agencies for specific SIP implementation.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

The relevant regulatory requirements have been codified in APC&E Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 7 (pertaining to sampling and testing). Provisions in APC&EC Chapter 7, Regulation 19.705 provide for the reporting of emissions inventories in a format established by the ADEQ on a schedule set forth in that section. In addition, APC&EC Regulation 19.705 requires the submission of emission statements as required by the CAA. Area, mobile, and non-road data are required to be reported on a three-year cycle.

Enforceable emission limitations and other control measures are covered in the Arkansas Water and Air Pollution Control Act and those provisions of Ark. Code Ann. sections 8–4–310 and 8–4–311. Elements of the program for enforcement are found in the monitoring, recordkeeping and reporting requirements for sources in these control measures as well as individual SIP permits.

More detail and links to Arkansas' emissions data are provided in the TSD for this action.

(G) Emergency authority: The SIP must provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary.

Ark. Code Ann. section 8–1–202(b)(2)(C) empowers the ADEQ to issue orders under circumstances that reasonably require emergency measures to be taken to protect the environment or the public health and safety. APC&EC Regulation 8.502 requires ADEQ to publish a Notice of Emergency Order in a newspaper covering the affected area, or in a newspaper of statewide circulation. The notice must contain a description of the action, ADEQ's authority for taking the action and other information appropriate to ensure the public is informed about the action. Ark. Code Ann. section 8–4–202(e)(1) empowers APC&EC to declare an emergency and implement emergency rules, regulations, suspensions, or moratoria on categories or types of permits if APC&EC determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits. APC&EC Regulation 8, Administrative Procedures, Regulation 8.807 authorizes the Commission to waive or reduce the notice requirements in cases involving emergency rulemaking. No emergency rule shall be effective for more than 180 days.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

The AWAPCA, Section 82–1935(1), empowers the APC&EC to ''formulate and promulgate, amend, repeal, and enforce rules and regulations implementing or effectuating the powers and duties of the Commission [. . .] to control air pollution''. Therefore, Arkansas has the authority to revise its SIP as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, Arkansas also has the authority under the AWAPCA provisions to revise its SIP in the event the EPA (pursuant to the Act) finds the SIP to be substantially inadequate to attain the NAAQS. APC&EC Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 1, provides a clear delineation of those regulations that are promulgated by APC&EC in satisfaction of certain requirements of the CAA. Ark. Code Ann. section 8–4–311(a)(7) empowers ADEQ to administer and enforce all laws and regulations relating to pollution of the air. Ark. Code Ann. section 8–4–202(d)(4)(A)(ii) authorizes APC&EC to refer to the Code of Federal Regulations for any APC&EC standard or regulation that is identical to a regulation promulgated by the EPA. The APC&EC's Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 1, demonstrates that those regulations that are promulgated by the Commission satisfy the requirements of this provision of the CAA.

(I) Nonattainment areas: CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address CAA section 110(a)(2)(I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will act on any part D nonattainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.[13]

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) Section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; (3) prevention of significant deterioration of air quality; and (4) visibility protection.

Under APC&EC Regulation 19, Chapter 9, Arkansas has incorporated by reference the requirements in 40 CFR part 52 for PSD in their entirety, with the exception of 40 CFR 52.21(b)(2)(iii)(a), 52.21(b)(49), 52.21(b)(50), 52.21(b)(55–58), 52.21(i) and 52.21(cc). These provisions were approved by EPA as part of the federally-approved SIP. These incorporated provisions also provide for protection of visibility in Federal Class I areas. All new major sources and major modifications are subject to a comprehensive EPA-approved PSD permitting program, including GHG PSD permitting that was approved on April

[13] Arkansas does not presently have any designated ozone nonattainment areas.

2, 2013 (78 FR 19596) and $PM_{2.5}$ PSD permitting approved on March 4, 2015 (80 FR 11573). Chapter 9 of APC&EC Regulation 19 authorizes enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Federal Class I areas. The visibility sub-element of Element J is not being addressed because as EPA stated in a September 13, 2013 ''Guidance on Infrastructure State Implementation Plan Elements under CAA sections 110(a)(1) and 110(a)(2),'' we believe that there are no newly applicable visibility protection obligations pursuant to Element J after the promulgation of new or revised NAAQS.

(1) Consultation With Identified Official on Certain Actions: The i-SIP needs to show that there is an established process for consultation with general purpose local governments, designated organization of elected officials of local governments, and any federal land manager having authority over federal land to which the plan applies, consistent with CAA section 121, which lists the specific types of actions for which consultation is required. If the relevant statute is self-executing such that there is no associated regulation or other documents, then the statute would need to be included in the SIP. If a regulation or other document meeting the CAA requirements exists, then the regulation or other document would need to be included in the SIP submission, and the authorizing statute should be referenced but the statute is not required to be part of the EPA approved SIP. Under the requirements of 40 CFR 51.240, the SIP would need to identify organizations ''that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations.'' The plan should include any agreements or memoranda of understanding among the organizations. The AWAPCA, as codified under Ark Code Ann. section 8–1–203 provides that the APC&EC ''shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern'' prior to the adoption of any rule or regulation implementing the substantive statutes charged to the ADEQ for administration. In addition, Ark. Code Ann. section 8–4–311(a)(2) provides that the ADEQ or its successor shall have the power and duty ''to advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the Federal Government, and with affected groups in the furtherance of the purposes of this chapter.'' Further, Regulation 19.904(D) provides that ADEQ shall make determinations that a source may affect air quality or visibility in a mandatory Class I federal area based on screening criteria agreed upon by the ADEQ and the Federal Land Manager.[14]

(2) *Public Notification:* The i-SIP submission needs to demonstrate that the air agency does regularly notify the public of instances or areas in which the new or revised primary NAAQS was exceeded; it needs to advise the public of health hazards associated with such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone [15] and $PM_{2.5}$ NAAQS. The air quality forecasts can be found on the ADEQ website: For 8- hour ozone and $PM_{2.5,}$ the forecast includes two regions in the State. Ozone forecasts are made daily during the ozone season for each of the forecast areas.[16] The ozone forecasts are made, in most cases, a day in advance by 2:00 p.m. local time and are valid for the next day. When the forecast indicates that ozone levels will be above the 8-hour ozone standard, the ADEQ and the Arkansas Department of Health issue an Ozone Health Advisory. In addition, the State implements an Ozone Action Day (OAD) program [17] and will issue an ozone alert in the afternoon on the day before an elevated level of ozone is expected to occur. Announcements for an OAD will be broadcast through television and other news media, and to employers participating in the OAD program. The OAD program includes examples of actions that can be implemented by individuals and organizations to reduce ozone levels and exposure to ozone. Also, through the Metroplan website, the public can subscribe to an electronic information system that provides air quality forecast and ozone alert information via email. Ozone data are posted on the ADEQ website; current, regional hourly and regional 8-hour ozone data are posted hourly (See *http://www.adeq.state.ar.us/techsvs/air_chem_lab/ozone_monitors.aspx*). Provisions regarding public availability of emission data were also approved into the Arkansas SIP on April 12, 2007 (72 FR 18394).

(3) PSD: CAA section 110(a)(2)(J) requires Arkansas to meet the applicable requirements of Part C, PSD. The state has a comprehensive EPA approved PSD permitting program, including GHG PSD permitting, in the Arkansas SIP. The PSD requirements for this sub-element are much the same as those addressed earlier under CAA section 110(a)(2)(C), *Program for enforcement of control measures*.

(4) Visibility Protection: The ADEQ SIP requirements relating to visibility protection are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations.

(K) *Air quality and modeling/data:* The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

APC&EC Regulation 19, Chapter 3, requires that ADEQ conduct ambient air monitoring and computer modeling of regulated air pollutant emissions in any area that can reasonably be expected to be in excess of the NAAQS and to review the ambient air impacts of any new or modified source of federally regulated air emission that is the subject of the requirements of the SIP. See APC&EC Regulation 19.302(A) and (B). Under APC&EC Regulation 19.302(B), all computer modeling shall be performed using EPA-approved models and using averaging times commensurate with averaging times stated in the NAAQS. ADEQ has the ability to submit data related to air quality modeling to the EPA under Ark. Code Ann. section 8–4–311(a)(2) which gives ADEQ the power to advise, consult, and cooperate with the Federal Government. Modeling and emissions reductions measures have been submitted by Arkansas and approved into the SIP. For example, we reference the air modeling and emissions reductions data submitted within the Crittenden County Economic Development Zone SIP revisions, as

[14] See 72 FR 18394 (April 12, 2007).

[15] The ADEQ forecasts for 8-hour ozone are based on the 2015 ozone standard, which is 70 ppb.

[16] Ozone is a gas composed of three oxygen atoms. Ground level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack but is created by a chemical reaction between NO_X and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. For Arkansas, the ozone season runs from March 1 through November 31 (see 40 CFR 58, APPENDIX D, Table D–3). The Arkansas air quality control regions are defined at 45 FR 6571 (January 29, 1980).

[17] The 2 forecast areas for 8-hour ozone and $PM_{2.5}$ are Little Rock and Springdale. See h*ttps://www.adeq.state.ar.us/techsvs/air_chem_lab/ozone_monitors.aspx* and *https://www.adeq.state.ar.us/techsvs/air_chem_lab/pm_monitors.aspx.*

well as the demonstration of maintenance of the 2008 8-hour ozone standard in Crittenden County. 81 FR 24030 (April 25, 2016). The measures in these SIPs were approved by EPA and adopted into the SIP.

The ADEQ has the power and duty, to conduct air quality research and assessments, including the causes, effects, prevention, control and abatement of air pollution. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, ADEQ can perform modeling for primary and secondary NAAQS on a case-by-case permit basis consistent with their SIP approved PSD rules and with EPA guidance.

(L) Permitting Fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

Arkansas' statutes give ADEQ the authority to establish permit fees and adjust them as necessary. APC&EC Regulation No 26, Chapter 11 meets the CAA requirements for Title V permitting fee programs and Regulation No. 9, Chapter 5 contains the air permit fees applicable to non-part 70 permits and general permits.[18] The ADEQ has adequate authority to hire and compensate employees; accept and administer grants or other funds; establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs; and authorizes the collection of additional fees necessary to cover reasonable costs associated with processing air permit applications and the costs of implementing and enforcing the terms and provisions of the permits. The state has in place fee programs for major and minor sources of air pollution, as well as an area source operating fee program that covers other sources in the state.

(M) Consultation/participation by affected local entities: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the earlier discussions for CAA sections 110(a)(2)(J), sub-elements (1) and (2) for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Ark. Code. Ann. section 8–1–203 provides that the APC&EC shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern prior to the adoption of any rule or regulation implementing the substantive statutes charged to the ADEQ for administration.

Additionally, the state noted that pursuant to APC&EC Regulation 8, Arkansas will continue to provide for consultation and participation from those affected by the SIP. Under APC&EC Regulation 8, those organizations affected by the SIP will be able to participate in developing the SIP via comments and potential public hearings. ADEQ is the sole state-level enforcer and implementer of the SIP. See APC&EC Regulation 8.205 *Public Notice of Permit Application;* APC&EC Regulation. 8.206 *Request for Public Hearing on Application for Permit;* APC&EC Regulation 8.207 *Public Notice of Draft Permitting Decision;* APC&EC Regulation. 8.208 *Public Comment on Draft Permitting Decision;* APC&EC Regulation 8.209 *Public Hearings;* APC&EC Regulation 8.405 *Public Notice of Notices of Violations and Consent Administrative Orders;* APC&EC Regulation 8.801 *Public Notice of Rulemaking.*

ADEQ participates in the Central State Air Resources Agencies, which is an organization of states, tribes, federal agencies and other interested parties concerned with air quality. The interactions and public participation on rule and plan development are consistent with the requirements of CAA section 110(a)(2)(M).

Modifications to Regulation 19, Definitions and Regulation 19, Appendix B

As part of the state's implementation of the 2015 O_3 NAAQS, the State modified their Regulation 19 definition of ''National Ambient Air Quality Standards'' to include the 2015 O_3 NAAQS. The State also made the same change to the table entitled ''Appendix B: National Ambient Air Quality Standard List'' of Regulation 19. The APC&EC adopted these changes on September 27, 2019 and submitted them for inclusion into the state SIP along with the 2015 O_3 i-SIP elements. We find these changes are appropriate and will enable the State to implement the 2015 O_3 NAAQS. We are proposing to approve the changes to Regulation 19, Definitions, and the change to Regulation 19, Appendix B, into the Arkansas SIP.

III. Proposed Action

EPA is proposing to approve portions of the October 25, 2018, Arkansas i-SIP submittal for the 2015 ozone NAAQS as detailed in Table 1, below. The portions of the submittal dealing with CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2, Significant Contribution to Nonattainment and Interference with Maintenance in other States, and CAA section 110(a)(2)(D)(i)(II), prong 4, Interference with Visibility Protection in other States will be addressed in separate, future actions.

TABLE 1—PROPOSED ACTION ON ARKANSAS INFRASTRUCTURE AND TRANSPORT SIP SUBMITTALS FOR THE 2015 OZONE NAAQS

Element	Proposed action
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii): PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	SA
(D)(i)(II): PSD (prong 3)	A
(D)(i)(II): Visibility Protection (prong 4)	SA
(D)(ii): Interstate and International Pollution Abatement	A

[18] Last approved by EPA at 83 FR 6471, February 14, 2018.

TABLE 1—PROPOSED ACTION ON ARKANSAS INFRASTRUCTURE AND TRANSPORT SIP SUBMITTALS FOR THE 2015 OZONE NAAQS—Continued

Element	Proposed action
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table 1:
A: Proposing to Approve.
+: Not germane to infrastructure SIPs.
SA: EPA is acting on this infrastructure requirement in a separate rulemaking action.

Based upon review of the State's infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in the EPA-approved Arkansas SIP, EPA believes that Arkansas has the infrastructure in place to address all applicable required elements of CAA sections 110(a)(1) and (2), except as noted above, to ensure that the 2015 O_3 NAAQS is implemented in the State.

We are also proposing to approve the submitted changes to Regulation 19 Definitions and Appendix B that reference the 2015 ozone NAAQS.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10,1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

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

Dated: June 16, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–13427 Filed 6–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0661; FRL–10010–47–Region 4]

Air Plan Approval; GA: Non-Interference Demonstration and Maintenance Plan Revision for the Removal of Transportation Control Measures in the Atlanta Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by Georgia, through the Georgia Environmental Protection Division (GA EPD), on September 16, 2019, for the purpose of removing certain transportation control measures (TCMs) from thirteen counties in the Atlanta, Georgia area. EPA is also proposing to approve Georgia's update to the 2008 8-hour ozone maintenance

plan that was submitted in the September 16, 2019, SIP revision. Specifically, EPA is proposing to approve updates to the mobile emissions inventory, the associated 2030 motor vehicle emissions budgets (MVEBs), and measures offsetting the potential emissions increases due to removal of the TCMs from the Georgia SIP. EPA's preliminary analysis indicates that this SIP revision would not interfere with attainment or maintenance of any national ambient air quality standards (NAAQS or standards) or any other Clean Air Act (CAA or Act) requirements.

DATES: Comments must be received on or before July 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0661 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) 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. 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). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9207. Ms. Myers can also be reached via electronic mail at *myers.dianna@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. EPA's Proposed Action

A. What action is EPA proposing?

EPA is proposing to approve the removal of certain TCMs[1] applicable in thirteen counties within the Atlanta Area[2] from Georgia's SIP. EPA is also proposing to approve Georgia's update to the 2008 8-hour ozone maintenance plan that was submitted in the September 16, 2019, SIP revision. Specifically, EPA is proposing to approve updates to the mobile emissions inventory and the associated MVEBs in the 2008 8-hour ozone Maintenance Plan, and measures offsetting the potential emissions increases due to removal of the TCMs from the Georgia SIP. In addition, EPA is proposing to find that removing the TCMs from the Atlanta Area would not interfere with attainment or maintenance of any NAAQS, reasonable further progress (RFP), or with any other applicable requirement of the CAA.

B. What is the background of the Atlanta area?

On November 6, 1991 (56 FR 56694), EPA designated and classified the following counties in the Atlanta Area as a serious ozone nonattainment area for the 1-hour ozone NAAQS: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (the Atlanta 1979 1-hour ozone Area). TCMs were implemented in the 13-counties comprising the Atlanta 1979 1-hour ozone Area. *See* Table 2–1 in the September 16, 2019, SIP revision. Because the Atlanta 1979 1-hour ozone Area failed to attain the 1-hour ozone NAAQS by November 15, 1999, EPA issued a final rulemaking action on September 26, 2003, to reclassify or "bump up," the area to a severe ozone nonattainment area. *See* 68 FR 55469. Subsequently, the Atlanta 1979 1-hour ozone Area attained the 1-hour ozone NAAQS, and thus EPA redesignated the nonattainment area to attainment for the 1-hour ozone NAAQS. *See* 70 FR 34660 (June 15, 2005). The 1979 1-hour ozone NAAQS was revoked, effective June 15, 2005. *See* 69 FR 23951 (April 30, 2004).

On April 30, 2004 (69 FR 23858), EPA designated the following 20 counties in the Atlanta Area as a marginal nonattainment area for the 1997 8-hour ozone NAAQS: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton (Atlanta 1997 8-hour ozone Area). The Atlanta 1979 1-hour ozone Area is a sub-set of this 20-county area. EPA reclassified the Atlanta 1997 8-hour ozone Area as a moderate nonattainment area on March 6, 2008, because the area failed to attain the 1997 8-hour ozone NAAQS by the required attainment date of June 15, 2007. *See* 73 FR 12013. Subsequently, the Atlanta 1997 8-hour ozone Area attained the 1997 8-hour ozone standard, and on December 2, 2013, EPA redesignated the Atlanta 1997 8-hour ozone Area to attainment for the 1997 8-hour ozone NAAQS. *See* 78 FR 72040. The 1997 8-hour ozone NAAQS was revoked, effective April 6, 2015. *See* 80 FR 12264 (March 6, 2015).

On May 21, 2012 (77 FR 30088), EPA designated the following 15-counties as marginal nonattainment for the 2008 8-hour ozone NAAQS: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale (Atlanta 2008 8-hour ozone Area). The Atlanta 1979 1-hour ozone Area is sub-set of the Atlanta 2008 8-hour ozone Area. The Atlanta 2008 8-hour ozone Area did not attain the 2008 8-hour ozone NAAQS by the attainment date of July 20, 2015, and therefore on May 4, 2016, EPA reclassified the area from a marginal nonattainment area to a moderate nonattainment area for the 2008 8-hour ozone standard. *See* 81 FR 26697. Subsequently, on July 14, 2016, the Atlanta 2008 8-hour ozone Area attained the 2008 8-hour ozone standard. *See* 81 FR 45419. EPA redesignated the Atlanta 2008 8-hour ozone Area to attainment for the 2008 8-hour ozone NAAQS. *See* 82 FR 25523.

On October 26, 2015, EPA revised the 8-hour ozone standard from 0.075 parts per million (ppm) to 0.070 ppm. *See* 80 FR 65292. Subsequently, on June 4, 2018 (83 FR 25776), EPA designated the following seven Atlanta counties as marginal nonattainment for the 2015 8-hour ozone NAAQS: Bartow, Clayton, Cobb, Dekalb, Fulton, Gwinnett and Henry (Atlanta 2015 8-hour ozone Area). The seven counties comprising the Atlanta 2015 8-hour ozone Area were also part of the 13-county Atlanta 1979 1-hour ozone Area. Areas designated as marginal nonattainment must attain the standard by August 3, 2021. Although the attainment date is

[1] See section I.D. for a discussion of the TCMs for which Georgia has requested removal. Georgia is removing all TCMs except for the Intersection Upgrade TCM, which will remain in the Georgia SIP. However, for this SIP revision and non-interference demonstration, Georgia was conservative by modeling removal of all the TCMs.

[2] The Atlanta Area consists of the following 20 counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. As discussed further in section I.B., this area encompasses the 13-county 1-hour Atlanta Area for the 1979 ozone NAAQS, the 20-county 8-hour Atlanta Area for the 1997 ozone NAAQS, the 15-county 8-hour Atlanta Area for the 2008 ozone NAAQS, and the 7-county 8-hour Atlanta Area for the 2015 ozone NAAQS.

August 3, 2021, marginal areas must show attainment using air quality data for years 2018 through 2020.

C. What is the background of the TCMs?

CAA section 108(f) contains information related to processes, procedures, and methods that can be used by states and transportation planning agencies to reduce or control transportation and mobile source related pollutants and includes a non-comprehensive list of transportation control measures.

Section 93.101 of the transportation conformity rule at 40 CFR part 93 defines a TCM as: Any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in CAA section 108(f), or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

D. Why is EPA proposing this action?

On September 16, 2019, Georgia submitted a SIP revision, requesting removal of certain TCMs from the Georgia SIP. The following TCMs have been approved into the Georgia SIP: High Occupancy Vehicle (HOV) Lanes; High Occupancy Toll (HOT) Lanes; Atlantic Station; Express Bus Routes; Improvements/Expansion of Bus Service; Park and Ride Lots; Transit Signal Preemption; Clean Fuel Buses; Clean Fuels Revolving Loan Program; Intersection Upgrade, Coordination and Computerization; ATMS/Incident Management; Regional Commute Options & HOV Marketing; Transportation Management Associations (TMAs); Transit Incentives; and University Rideshare Programs. *See* 63 FR 23387 (April 29, 1998), 63 FR 34300 (June 24, 1998), 64 FR 13348 (March 18, 1999), 64 FR 20186 (April 26, 1999), 65 FR 52028 (August 28, 2000), 77 FR 24397 (April 24, 2012), and Table 1, Appendix A, Table 2–1 and Table 2–2 of Georgia's September 16, 2019 SIP Revision. Georgia is requesting removal of all the TCMs that are approved into the SIP except for Intersection Upgrade, Coordination and Computerization. *See* September 16, 2019, SIP Revision.

Georgia's September 16, 2019, SIP revision also includes a non-interference demonstration to support the State's request to remove TCMs implemented in the Atlanta Area from Georgia's SIP. Georgia's September 16, 2019, SIP revision evaluates the Atlanta 2008 8-hour ozone Area, which encompasses the smaller Atlanta 1979 1-hour ozone and Atlanta 2015 8-hour ozone Areas. Georgia's demonstration also includes an evaluation of the impact that removing the TCMs would have on the Atlanta Area's ability to maintain the ozone NAAQS. Additionally, Georgia's demonstration also evaluates whether the removal of the TCMs would interfere with the ability of the Atlanta 2015 8-hour ozone Area to attain the ozone NAAQS by August 3, 2021, which is the attainment date for areas classified as marginal, or any of the other applicable NAAQS.

Georgia's SIP revision updates the 2008 8-hour ozone maintenance plan [3] to support the State's request for removal of most of the TCMs for the Georgia SIP.[4] To revise the SIP and make the demonstration of non-interference, Georgia completed a technical analysis, including using EPA's Motor Vehicle Emissions Simulator (MOVES2014a) to project the change in emissions that would result from removing the TCMs from the Atlanta Area. The 2014 attainment base year mobile emissions were taken directly from the 2008 maintenance SIP, and future-year on-road mobile source emissions estimates for 2020, 2030, and 2040 were modeled with and without the TCMs. Georgia interpolated years 2025 and 2035 to further illustrate the downward trend in emissions. Georgia selected years 2020, 2030, and 2040 because these years are used by the Atlanta Regional Commission (ARC) in Atlanta's transportation conformity determinations. The July 18, 2016, maintenance plan and the subsequent August 15, 2018, revision showed compliance with and maintenance of the 2008 8-hour ozone NAAQS until the 2030 outyear by providing information to support the demonstration that current and future emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) remained at or below the 2014 base year emissions inventory. Further discussions on the demonstration of non-interference for the 2015 8-hour ozone NAAQS and the other pollutants are provided later in the proposal.

EPA has evaluated Georgia's September 16, 2019, SIP revision and is proposing to approve the SIP revision removing the TCMs from the SIP and revising the maintenance plan for the Atlanta 2008 8-hour ozone Area. The Agency is also making the preliminary determination that removing the TCMs from the Georgia SIP would not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA in the Atlanta, Area. EPA's section 110(*l*) analysis of the non-interference demonstration included as a part of Georgia's September 16, 2019, SIP revision is provided below.

E. What are the Section 110(l) requirements?

Section 110(*l*) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and RFP (as defined in section 171), or any other applicable requirement of the Act. The mobile emissions modeling associated with Georgia's maintenance plan for the 2008 8-hour ozone NAAQS was premised upon the future-year emissions estimates for 2020 [5] which includes the emission reductions from the various TCMs in the Georgia SIP for the Atlanta Area. To approve Georgia's request to remove the TCMs in the Atlanta Area, EPA must conclude that requested change will satisfy section 110(*l*) of the CAA. In Georgia's September 16, 2019, SIP revision, the State's modeling includes the same future years as the original 2008 8-hour ozone maintenance plan but is now based on the federal 9.0 psi RVP limit and removal of the TCMs.

In the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA

[3] On August 15, 2018, Georgia submitted a request to revise and update the 2008 8-hour ozone maintenance plan to relax the federal Reid Vapor Pressure (RVP) requirements from 7.8 to 9.0 pounds per square inch (psi) RVP. On September 20, 2019, EPA published final approval allowing for a change for the federal RVP requirements. *See* 84 FR 49470. The approval of the August 15, 2018 SIP revision and change to the federal RVP requirements updated Georgia's mobile emissions inventory and MVEBs which are the basis for Georgia's September 16, 2019 submittal.

[4] For more detailed information on the current approved maintenance plan and revisions, see EPA's December 23, 2016 (81 FR 94283) proposed approval of Georgia's maintenance plan and EPA's February 12, 2019 (84 FR 3358) proposed approval of the relaxation of the federal RVP requirements. On April 23, 2019 (84 FR 16786), EPA approved the revision to the 2008 8-hour ozone maintenance plan.

[5] As discussed below, 2020 was chosen because the attainment date for the Atlanta 2015 8-hour ozone Area to attain the ozone standard is August 3, 2021, based on data from 2018 through 2020. Further, Georgia anticipated that 2020 was the first year that it could cease implementation of the TCMs.

under section 110(*l*), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, if actual emissions in the air are not increased. ''Equivalent'' emissions reductions are reductions that are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emissions reductions are equivalent, adequate justification must be provided. The compensating, equivalent reductions should represent actual emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure in order to preserve the status quo level of emission in the air. If the status quo is preserved, non-interference is demonstrated. In addition to being contemporaneous, the equivalent emissions reductions should also be permanent, enforceable, quantifiable, and surplus. The offset measures are described in Section I.M. of this notice.

EPA evaluates each section 110(*l*) non-interference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets 110(*l*) as applying to all NAAQS that are in effect, including those for which SIP submissions have not been made. The degree of analysis focused on any NAAQS in a non-interference demonstration varies depending on a number of relevant factors, including the nature of the emissions associated with the proposed SIP revision. EPA's section 110(*l*) analysis of the non-interference demonstration included as part of Georgia's September 16, 2019, SIP revision is provided below.

F. Proposed Analysis of Georgia's Non-Interference Demonstration

As mentioned above, on September 16, 2019, Georgia submitted a non-interference demonstration to support the State's request to remove several TCMs implemented in the Atlanta Area from the Georgia SIP. Georgia is currently in attainment for all particulate matter (PM), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), carbon monoxide (CO), and lead (Pb) NAAQS.

GA EPD focused its analysis on the impact that removing the TCMs would have on attainment and maintenance of the ozone standards and ozone precursors (NO_X and VOC). Specifically, Georgia's non-interference demonstration evaluates the Atlanta 2008 8-hour ozone Area, which encompasses the smaller Atlanta 1979 1-hour ozone Area and the Atlanta 2015 8-hour ozone Area. This demonstration includes an evaluation of the impact that removing the TCMs would have on Atlanta's ability to maintain the 1997 and 2008 ozone standards. It also evaluates whether removing the TCMs would interfere with the ability of the Atlanta 2015 8-hour ozone Area to attain the ozone standard by August 3, 2021, which is the attainment date for areas classified as marginal, or with any of the other applicable NAAQS. Although the attainment date is August 3, 2021, marginal areas must show attainment using air quality data for years 2018 through 2020.

Additional discussion regarding VOCs, NO_X, and PM is included later in this section because VOC and NO_X emissions are also precursors for PM, and NO_X is also a precursor for NO_2.

G. Non-Interference Analysis for the Ozone NAAQS

In its non-interference demonstration, Georgia used EPA's MOVES2014a model to develop its projected mobile emissions inventory according to EPA's guidance for on-road mobile sources. As mentioned in Section I.D, the on-road mobile source emissions calculations for 2020, 2025 and 2030, 2035, and 2040 were generated with MOVES2014a with and without the TCMs.[6] Georgia used two categories of methodologies to calculate emissions from the TCMs: An activity-based model (ABM) and an off-model method. The emissions from the TCM projects calculated with the ABM were coded directly into the ARC's travel demand model then ran through MOVES2014a. The emissions from the TCM projects using the off-model method were added to the MOVES2014a output. See Appendix B of the submittal for more details on the methodologies and the projects identified in each category.

The information provided by Georgia indicates that that current and future emissions of NO_X and VOC remained at or below the 2008 8-hour ozone NAAQS attainment base year (2014) emissions inventory, thus showing compliance with the 2008 8-hour ozone NAAQS.[7] The analysis in this proposal will primarily refer to the year 2020 because that is the first year Georgia anticipated it would be able to remove the TCMs, and 2030 because it is the maintenance year in the Atlanta 2008 8-hour ozone Area maintenance plan. In addition, the emissions trend for year 2020 will be discussed later in the notice because attainment for the 2015 8-hour ozone NAAQS will be based on years 2018 through 2020.

Tables 1 and 2, below, show the direct impact on the on-road mobile source emissions from removing the TCMs in the Atlanta Area. As summarized below, on-road NO_X and VOC emissions increase when the TCMs are removed. NO_X emissions increased by 0.32 and 0.09 tons per day (tpd) in 2020 and 2030, respectively in the Atlanta 2008 8-hour ozone Area. VOC emissions also increased by 0.49 and 0.27 tpd in 2020 and 2030, respectively in the same area. As discussed in section I.L. of this proposal, Georgia has also requested EPA approve measures to offset these small increases.

TABLE 1—ON-ROAD NO_X EMISSIONS WITH AND WITHOUT TCMs[8]

Pollutant and region	Year	On-road emissions with TCMs (tpd)	On-road emissions without TCMs (tpd)	Emissions increase with TCM removal (tpd)	Emissions increase with TCM removal as percentage
13-county area	2020	76.70	77.01	0.31	0.41
	2025	55.74	55.94	0.20	0.35
	2030	34.78	34.86	0.08	0.23
	2035	29.10	29.14	0.04	0.14
	2040	23.42	23.42	0.00	0.00

[6] For additional information on the methodology used to assess the emissions impacts, see Appendix B of the September 16, 2019 submittal.

[7] The 2014 base year emissions are unchanged from the 2008 8-hour ozone maintenance plan included in Appendix A of the September 16, 2019, SIP revision.

[8] In this table, the 13-county area refers to the Atlanta 1979 1-hour ozone Area and the 15-county area refers to the 2008 8-hour ozone Area. The 2-county area is the difference between the Atlanta 1-hour ozone Area and the Atlanta 2008 8-hour ozone Area. This table reflects how the State references these areas in their submittal.

TABLE 1—ON-ROAD NO_X EMISSIONS WITH AND WITHOUT TCMs [8]—Continued

Pollutant and region	Year	On-road emissions with TCMs (tpd)	On-road emissions without TCMs (tpd)	Emissions increase with TCM removal (tpd)	Emissions increase with TCM removal as percentage
2-county area	2020	9.49	9.50	0.01	0.11
	2025	7.16	7.17	0.01	0.14
	2030	4.82	4.83	0.01	0.21
	2035	4.36	4.37	0.01	0.12
	2040	3.90	3.90	0.00	0.00
15-county [9] area	2020	86.19	86.51	0.32	0.37
	2025	62.89	63.10	0.21	0.33
	2030	39.46	39.51	0.09	0.23
	2035	33.46	33.51	0.05	0.13
	2040	27.32	27.32	0.00	0.00

TABLE 2—ON-ROAD VOC EMISSIONS WITH AND WITHOUT TCMs [10]

Pollutant and region	Year	On-road emissions with TCMs (tpd)	On-road emissions without TCMs (tpd)	Emissions increase with TCM removal (tpd)	Emissions increase with TCM removal as percentage
13-county area	2020	54.14	54.63	0.49	0.90
	2025	43.59	43.96	0.37	0.86
	2030	33.03	33.30	0.27	0.81
	2035	28.69	28.93	0.24	0.83
	2040	24.36	24.56	0.20	0.86
2-county area	2020	4.72	4.73	0.01	0.21
	2025	3.83	3.83	0.01	0.08
	2030	2.93	2.93	0.00	0.00
	2035	2.59	2.59	0.00	0.00
	2040	2.26	2.26	0.00	0.00
15-county [11] area	2020	58.86	59.35	0.49	0.83
	2025	47.41	47.79	0.38	0.80
	2030	35.96	36.23	0.27	0.75
	2035	31.29	31.53	0.24	0.77
	2040	26.62	26.83	0.21	0.79

Although removal of the TCMs from the Georgia SIP is projected to cause small increases in ozone precursor emissions in the Atlanta 2008 8-hour ozone Area, the volume of those increases decreases over time. For instance, emissions of both precursors increase with removal of the TCMs; however, the increases decrease over time from a 0.37 percent increase in 2020 to a 0.23 percent increase in 2030 for NO_X emissions, and from a 0.83 percent increase in 2020 down to a 0.75 percent increase in 2030 for VOC emissions in the 15-county Atlanta 2008 8-hour ozone Area. The overall on-road emissions for NO_X decrease from 86.51 tpd in 2020 to 39.51 tpd in 2030. Similarly, the overall on-road emissions for VOC decrease from 59.35 tpd in 2020 to 36.23 tpd in 2030 in the Atlanta 2008 8-hour ozone Area. This indicates that changes in on-road emissions from removing the TCMs from the SIP would not interfere with continued maintenance of the 2008 8-hour ozone NAAQS in the Atlanta 2008 8-hour ozone Area.

Tables 3 and 4, below, show the impact of TCM removal on NO_X and VOC emissions from all sectors (point, area, nonroad, and on-road) compared to the 2014 attainment inventory. Georgia calculated the change in emissions from attainment levels with and without the TCMs and used the term ''margin'' to indicate the amount of the decrease in tpd from attainment (2014) to the maintenance (2030) and beyond (2040). The amount of margin ''allotted'' to TCM removal is the difference in emissions with and without the TCMs. Georgia also shows the allotted difference as a percent.

[9] In final calculations for the Atlanta 2008 8-hour ozone Area, an additional 0.03 tpd is added to these values to account for the Senior Exemption. Senior citizens are exempt from the Inspection and Maintenance (I/M) program testing, and thus 0.03 tpd (based on 2002 emissions comparisons) is used as a conservative estimate of disbenefit.

[10] See footnote 9.

[11] In final calculations for the Atlanta 2008 8-hour ozone Area, an additional 0.05 tpd would be added to these values to account for the Senior Exemption. Senior citizens are exempt from the Inspection and Maintenance (I/M) program testing, and thus 0.05 tpd (based on 2002 emissions comparisons) is used as a conservative estimate of disbenefit.

TABLE 3—2014 NO_X ATTAINMENT INVENTORY COMPARISON WITH AND WITHOUT TCMs

Year	Total 2014 NO_X attainment inventory (Tpd)	Total NO_X emissions inventory with TCMs (tpd)	Total NO_X emissions inventory without TCMs (tpd)	Current margin with TCMs (NO_X) (tpd)	Margin without TCMs (NO_X) (tpd)	Amount of margin allotted to TCM removal (tpd)	Percent of margin allotted to removal of TCMs
2014	283.09	283.09	283.09	0	N/A	N/A	N/A
2020	283.09	181.44	181.76	101.65	101.33	0.32	0.31
2025	283.09	153.29	153.49	129.80	129.60	0.21	0.16
2030	283.09	125.14	125.23	157.95	157.86	0.09	0.06
2035	283.09	118.69	118.74	164.40	164.35	0.05	0.03
2040	283.09	112.24	112.24	170.85	170.85	0.00	0.00

TABLE 4—2014 VOC ATTAINMENT INVENTORY COMPARISON WITH AND WITHOUT TCMs

Year	Total 2014 VOC attainment inventory (tpd)	Total VOC emissions inventory with TCMs (tpd)	Total VOC emissions inventory without TCMs (tpd)	Current margin with TCMs (VOC) (Tpd)	Margin without TCMs (VOC) (tpd)	Amount of margin allotted to TCM removal (tpd)	Percent of margin allotted to removal of TCMs
2014	266.25	266.25	N/A	0	N/A	N/A	N/A
2020	266.25	237.67	238.16	28.58	28.09	0.49	1.71
2025	266.25	226.36	226.74	39.89	39.51	0.38	0.95
2030	266.25	215.06	215.33	51.19	50.92	0.27	0.53
2035	266.25	211.77	212.01	54.48	54.24	0.24	0.44
2040	266.25	208.48	208.69	57.77	57.56	0.21	0.36

As shown in Table 3, when the TCMs are removed, the total NO_X emissions increase the most in 2020 by 0.32 tpd, from 181.44 tpd to 181.76 tpd. In 2030, NO_X emissions increase slightly by 0.09 tpd, from 125.14 tpd to 125.23 tpd when the TCMs are removed. Although the removal of TCMs results in small increases in NO_X emissions initially, overall, total NO_X emissions decrease by 170.85 tpd from the attainment year 2014 to 2040. With respect to years 2020 through 2040, total NO_X emissions are less than the attainment year of 2014.

Table 4 shows that the total VOC emissions increase in 2020 by 0.49 tpd, from 237.67 tpd to 238.16 tpd. In 2030, VOC emissions increase by 0.27 tpd, from 215.06 tpd to 215.33 tpd. Although there are emissions increases in VOC when the TCMs are removed, there is an overall downward trend in emissions from the 2014 attainment year to the 2030 maintenance year. VOC emissions decrease from 266.25 tpd in 2014 down to 208.69 tpd in 2040 an overall decrease of 57.56 tpd. With respect to years 2020 through 2040, total VOC emissions are less than the attainment year of 2014.

Based on Tables 3 and 4, total NO_X emissions trend downward from 283.09 tpd in 2014 to 125.23 tpd in 2030 with the TCMs removed. This gives a safety margin of 157.86 tpd. The VOC safety margin is 50.92 tpd because of the downward trend from the 2014 attainment level of 266.25 tpd to 215.33 tpd in 2030 with the TCMs removed. A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The decline in total emissions, including the safety margin, indicate that changes in on-road emissions from removing the TCMs from the SIP would not interfere with continued maintenance of the 2008 8-hour ozone NAAQS in the Atlanta 2008 8-hour ozone Area.

H. Non-Interference Analysis for the 2015 Ozone NAAQS

The current 3-year design value for 2016–2018 for the Atlanta 2015 8-hour ozone Area is 0.073 ppm.[12] The 2015 8-hour ozone NAAQS is 0.070 ppm and this area is currently designated as marginal nonattainment for this NAAQS. Table 5, below, shows the ozone monitoring data from monitoring stations in Atlanta.

TABLE 5—2016–2018 DESIGN VALUE CONCENTRATIONS FOR ATLANTA (ppm) [13]

Location (county)	Monitoring station	4th Highest 8-hour ozone value			3-Year design values
		2016	2017	2018	2016–2018
Cobb	GA National Guard, McCollum Pkwy. (13–067–0003)	0.070	0.065	0.065	0.066
Coweta	University of W Georgia at Newnan (13–077–0002)	0.066	0.057		([14])
DeKalb	2390–B Wildcat Road Decatur (13–089–0002)	0.074	0.068	0.067	0.069
Douglas	Douglas Co. Water Auth. W Strickland St. (13–097–0004).	0.071	0.066	0.064	0.067
Gwinnett	Gwinnett Tech, 5150 Sugarloaf Pkwy. (13–135–0002)	0.078	0.065	0.065	0.069
Henry	Henry County Extension Office (13–151–0002)	0.078	0.067	0.069	0.071
Paulding	Yorkville, King Farm (13–223–0003)	0.067			([15])
Rockdale	Conyers Monastery, 2625 GA Hwy. 212 (13–247–0001).	0.076	0.065	0.069	0.070

[12] The design value for an area is the highest 3-year average of the annual fourth-highest daily maximum 8-hour concentration recorded at any monitor in the area.

TABLE 5—2016–2018 DESIGN VALUE CONCENTRATIONS FOR ATLANTA (ppm) [13]—Continued

Location (county)	Monitoring station	4th Highest 8-hour ozone value			3-Year design values
		2016	2017	2018	2016–2018
Fulton	Confederate Ave., Atlanta (13–121–0055)	0.075	0.074	0.072	0.073

As previously mentioned, the Atlanta 2015 8-hour ozone Area must attain the 2015 8-hour ozone NAAQS by August 3, 2021, with air quality data for years 2018 through 2020.

Marginal areas are not required to provide attainment demonstrations because these areas are expected to attain the standard three years after being designated nonattainment. As such, Georgia has decided to demonstrate non-interference for removal of the TCMs for the 2015 8-hour ozone standard by securing offsetting, contemporaneous, compensating, equivalent, emissions reductions. These emission reductions are associated with measures that Georgia has proposed for incorporation into the SIP through its September 16, 2019, SIP revision and that were obtained for the Atlanta 2015 8-hour ozone Area to account for the small increases due to a removal of the TCMs. With offsets, EPA believes that removing the TCMs would not affect Atlanta's ability to attain the 2015 8-hour ozone NAAQS. A more detailed discussion regarding Georgia's ozone sensitivities and offset calculations for the Atlanta Area is provided below.

I. Sensitivity of Ozone in the Atlanta Area to NO_X and VOC Emissions

Control of NO_X and VOC are generally considered the most important components of an ozone control strategy, and NO_X and VOC make up the largest controllable contribution to ambient ozone formation. However, the Atlanta Area has shown a greater sensitivity of ground-level ozone to NO_X controls rather than VOC controls. This is due to high biogenic VOC emissions compared to anthropogenic VOC emissions in Georgia. Therefore, implemented control measures have focused on the control of NO_X emissions. The Atlanta Area is NO_X limited in such a way that changes in anthropogenic VOC emissions have little effect on ozone formation.

The Southeastern Modeling Analysis and Planning (SEMAP) project modeled sensitivities relative to 2018 emissions to evaluate the impact of NO_X and VOC reductions on daily 8-hour maximum ozone concentrations.[16] Each emissions sensitivity run reduced the 2018 anthropogenic NO_X or VOC emissions (point, area, mobile, nonroad, marine/aircraft/rail) within a specific geographic region by 30 percent. GA EPD used the SEMAP project to examine the normalized sensitivities of NO_X and VOC emissions on 8-hour daily maximum ozone concentrations (parts per billion (ppb) ozone/tpd) at nine ozone monitors in the Atlanta Area.[17] In order to look at the impact of removing the TCMs, Georgia averaged the normalized sensitivities from the nine site-specific Atlanta ozone monitors. The average normalized sensitivities for NO_X and VOC were −0.0768 and −0.0042 ppb/tpd, respectively.[18] The site-specific normalized NO_X and VOC sensitivities were applied to the expected emissions increases due to removing the TCMs. The emissions increases are based on 2018 values and represent the largest impact as the emissions increase will decrease each successive year. A removal of the TCMs results in an increase of VOC emissions of 0.49 tpd in 2020. *See* Table 3. The TCM removal also results in an increase of 0.32 tpd of NO_X in 2020 in the Atlanta Area decreasing over time to near zero by 2040. *See* Table 4. The corresponding NO_X and VOC emissions increases at the site-specific ozone monitors, due to the TCM removal, are found in Table 6 below. The results of the combined NO_X and VOC emissions increases from removing the TCMs demonstrate there are minimal increases in ozone concentrations at the monitors. The calculated changes in ozone levels are well below the level of precision of the ambient ozone monitors (1 ppb or 0.001 ppm).[19] Since the corresponding ozone increase at all nine monitors would only be seen at the fifth decimal place,[20] these small increases could not impact maintenance or attainment of any ozone NAAQS.

[13] These monitoring stations are representative of the air quality in the entire 2015 8-hour ozone Area even though not all counties in the area have a monitoring station. In addition, the table includes counties (Coweta, Douglas, Paulding, and Rockdale) that are not located within the Atlanta 2015 8-hour ozone Area but are located within the Atlanta 2008 8-hour ozone Area.

[14] The average of the 2016 and 2017 values for the Coweta Monitor (13–077–0002) is 0.061. The monitor was shut down on November 15, 2017. *See* GA EPD Addendum to 2018 Ambient Air Monitoring Plan, available at *https://airgeorgia.org/docs/2018%20Addendum%20to%20Annual%20Plan.pdf.*

[15] The value for the Paulding Monitor (13–223–0003) of 0.067 is the value for 2016 only. The monitor was shut down on January 31, 2017. *See* GA EPD Addendum to 2016 Ambient Air Monitoring Plan, available at *https://airgeorgia.org/docs/2016%20Addendum%20to%20Annual%20Plan.pdf.*

[16] As part of the SEMAP project, Georgia Institute of Technology performed an analysis of the sensitivity of ozone concentrations in the Eastern U.S. to reductions in emissions of both NO_X and VOCs. This analysis was based off the 2007 and 2018 SEMAP modeling which used the Community Multi-scale Air Quality (CMAQ) model, version 5.01 with updates to the vertical mixing coefficients and land-water interface. May 1st through September 30th was modeled using a 12-km modeling grid that covered the Eastern U.S. Details of the modeling platform set-up can be found in Appendix D of the September 16, 2019 SIP submission.

[17] For further details on the approach used to calculate the normalized sensitivities of NO_X and VOC, please see Appendix D of Georgia's submittal.

[18] *See* Appendix E–2 of the September 16, 2019 SIP submission for the sensitivity calculations.

[19] Ozone concentrations are reported in ppm and to three decimal places (*e.g.,* 0.070 ppm); any additional decimal places are truncated.

[20] Because the increases in Table 7 are reported in ppb, the changes are in the 2nd decimal place.

TABLE 6—EMISSIONS INCREASES DUE TO REMOVAL OF TCMS AND EFFECTS ON OZONE FORMATION

Monitor	Removal of TCMs				Combined
	2020 NO_X emissions increase (tpd)	Corresponding ozone increase at monitor due to NO_X increase [21] (ppb)	2020 VOC emissions increase (tpd)	Corresponding ozone increase at Monitor due to VOC increase (ppb)	Corresponding ozone increase at monitor (ppb)
Kennesaw	0.32	0.02378	0.49	0.00221	0.0260
Newnan	0.32	0.02579	0.49	0.00089	0.0267
Dawsonville	0.32	0.01991	0.49	0.00034	0.0203
South Dekalb	0.32	0.02467	0.49	0.00285	0.0275
Douglasville	0.32	0.02550	0.49	0.00205	0.0276
United Ave	0.32	0.01959	0.49	0.00377	0.0234
Gwinnett	0.32	0.02442	0.49	0.00127	0.0257
McDonough	0.32	0.02781	0.49	0.00167	0.0295
Dallas/Yorkville	0.32	0.02218	0.49	0.00054	0.0227
Conyers	0.32	0.02873	0.49	0.00152	0.0303

J. Non-Interference Analysis for the $PM_{2.5}$ NAAQS

Over the course of several years, EPA has reviewed and revised the $PM_{2.5}$ NAAQS several times. On July 18, 1997, EPA established an annual $PM_{2.5}$ NAAQS of 15.0 micrograms per cubic meter (μg/m³), and on April 14, 2005 (70 FR 19844) designated certain counties in the Atlanta Area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. These counties attained the 1997 annual NAAQS and were redesignated to attainment on February 24, 2016. *See* 81 FR 9114. On August 24, 2016, EPA took final action to revoke the 1997 $PM_{2.5}$ NAAQS for areas designated attainment or in maintenance for the standard. *See* 81 FR 58010.

On September 21, 2006 (71 FR 61144), EPA retained the 1997 annual $PM_{2.5}$ NAAQS of 15.0 μg/m³ but revised the 24-hour $PM_{2.5}$ NAAQS from 65.0 μg/m³ to 35.0 μg/m³. On November 13, 2009, EPA designated most of the state of Georgia—including the Atlanta Area—as unclassifiable/attainment for the 24-hour $PM_{2.5}$ NAAQS. *See* 74 FR 58688.

On December 14, 2012, EPA strengthened the annual primary $PM_{2.5}$ NAAQS from 15.0 μg/m³ to 12.0 μg/m.³ *See* 78 FR 3086. EPA designated the state of Georgia—including the Atlanta Area—as unclassifiable/attainment for the 2012 annual $PM_{2.5}$ NAAQS. *See* 80 FR 2206 (January 15, 2015), 81 FR 61136 (September 6, 2016). The current 2016–2018 design value for the annual and 24-hour $PM_{2.5}$ NAAQS are 10.1 and 21.0 μg/m³, respectively.

The recognized precursor pollutants for $PM_{2.5}$ are NO_X, SO_2, VOC, and ammonia. As mentioned above, removing the TCMs only results in small emissions increases of VOC and NO_X. Moreover, there have been several studies which have indicated that SO_2 is the primary driver of $PM_{2.5}$ formation in the Southeast.[22]

As previously stated, removing the TCMs does not affect the most significant $PM_{2.5}$ precursor (SO_2). In addition, the increases to other $PM_{2.5}$ precursors—NO_X and VOCs—are negligible. *See* Section I.G., above. Based on this and the fact that the current $PM_{2.5}$ design values for the Atlanta Area are below the level of the 2012 annual primary and 2006 24-hour $PM_{2.5}$ NAAQS, EPA is proposing to determine that removing the TCMs for the affected counties would not interfere with the Atlanta Area's attainment or maintenance of the $PM_{2.5}$ NAAQS.

K. Non-Interference Analysis for the 2010 NO_2 NAAQS

On February 9, 2010 (75 FR 6474), EPA established a 1-hour NO_2 standard set at 100 ppb. In 1971, an annual standard was set at a level of 53 ppb and has remained unchanged. EPA designated all counties in Georgia as unclassifiable/attainment for the 2010 NO_2 NAAQS on February 17, 2012. *See* 77 FR 95320. Currently, the 2016–2018 design values for the 2010 1-hour and annual NO_2 NAAQS are 53.0 and 16.3 ppb, respectively, in the Atlanta Area. Given that the area is well below the level of the NAAQS, the small NO_2 emissions increase from the TCM removal would not interfere with the area's ability to continue to attain the NAAQS. EPA is proposing to determine that removing the TCMs from the area would not interfere with attainment or maintenance of the 1-hour or annual NO_2 NAAQS.

L. Emissions Increase and Available Offsets and Measures

As shown in Section 1, Tables 3 and 4, removing the TCMs results in an increase in NO_X emissions in 2020 of 0.32 tpd and 0.49 tpd of VOC. The ozone season for the Atlanta ozone Area consists of 245 days per calendar year. This results in equivalent emissions increases of 79.06 tons per year (tpy) of NO_X and 121.01 tpy of VOC as shown below.

0.32 tpd NO_X * 245 days/year = 79.06 tpy of NO_X

0.49 tpd VOC * 245 days/year = 121.01 tpy of VOC

As discussed above, Table 6, shows ozone formation in the Atlanta 2008 8-hour ozone Area and the sensitivity to reductions of NO_X and VOC emissions. The Atlanta Area is a NO_X limited area; therefore, the control of NO_X emissions result in greater reductions of ozone compared to control of VOC emissions. The maximum VOC emissions increase resulting from removing the TCMs results in 0.49 tpd (121.01 tpy). This increase in VOC emissions can be converted to an equivalent increase in NO_X emissions. GA EPD multiplied the VOC emissions increase during ozone season by the ratio of the average VOC to NO_X normalized ozone sensitivities at the nine site-specific monitors, as discussed in Section I.I., to get the equivalent NO_X emissions increase. See the calculation below.

121.01 tpy VOC * (-0.00427ppb/tpd VOC)/(-0.07680 ppb/tpd NO_X) = 6.62 (VOC equivalent reduction) tpy NO_X

By adding the actual NO_X emissions increase during ozone season to the equivalent NO_X emissions increase from

[21] *See* Appendix E of the submission.

[22] *See, e.g., Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States,* Journal of Environmental Engineering (June 24, 2009), available at: *http://www.sciencedirect.com/science/article/pii/S0301479709001893?via%3Dihub.*

VOC emissions (VOC equivalent) using the sensitivity calculation, GA calculated the amount of NO_X offsets needed to remove the TCMs. See the calculation below.

79.06 tpy of NO_X + 6.62 tpy of NO_X (VOC equivalent reduction) = 85.68 tpy NO_X offsets required [23]

As mentioned earlier, Georgia is requesting the removal of all but one TCM from the SIP (*i.e.,* the Intersection Upgrade TCM), and therefore does not need to acquire the entire 85.68 tpy of NO_X offsets. Georgia used the same sensitivity calculations and ABM and off-model calculations mentioned in Section F to show the NO_X and VOC emissions increase associated with the removal of the TCMs and excluding the Intersection Upgrade TCM [24] as seen below.

0.11 tpd NO_X * 245 days/year = 27.93 tpy of NO_X

0.30 tpd VOC * 245 days/year = 74.30 tpy of VOC

74.30 tpy VOC * (−0.0042 ppb/tpd VOC)/(−0.0768 ppb/tpd NO_X) = 4.06 tpy NO_X

27.93 tpy of NO_X + 4.06 tpy of NO_X (VOC equivalent reduction) = 31.99 tpy of NO_X offsets needed.

Georgia's SIP revision includes two offset measures—school bus replacements and rail locomotive conversions—to obtain the necessary emissions reductions.[25] GA EPD has a school bus early replacement program. School bus replacement projects that were completed in 2018 using Diesel Emissions Reduction Act funding have resulted in NO_X emissions reductions of 12.86 tpy in the Atlanta 2008 8-hour ozone maintenance Area. Specifically, eighty-five old school buses (built in 1999–2005) in Fulton County were replaced with 2018 school buses. The replacements took place in September 2018. Georgia has not previously relied on these emissions reductions to satisfy any CAA requirement.

The Locomotive Conversion Program consists of two components in the Atlanta Area: (1) The conversion of three older traditional switcher locomotives into newly-available low emissions engine technology from Norfolk Southern Railway, Inc., and (2) Norfolk Southern Railway, Inc.'s conversion of two switchers into ''slugs'' which are driven by electrical motors whose electricity is received from companion ''mother'' locomotives. This configuration is referred to as mother-slug locomotives. Slugs do not have any direct emissions. The conversion took place in December 2018, which also falls within the contemporaneous timeframe and generated 25.99 tpy of NO_X reductions. Georgia has not previously relied on the emissions reductions from the Locomotive Conversion Program to satisfy any CAA requirement. *See* Table 8 below for a summary of the offsets.

TABLE 7—OFFSETS AVAILABLE FOR TCM REMOVAL IN 2020

	Locomotive conversions (tpy)	School bus replacements (tpy)	Total offsets (tpy)
Available NO_X Offsets	25.99	12.86	38.85

Based on the available offsets from the locomotive conversion projects and school bus early replacement projects, GA EPD has offsets in excess of the increase in emissions associated with removing the TCMs.

TABLE 8—NO_X EMISSIONS INCREASE COMPARED TO AVAILABLE EMISSIONS OFFSETS

Emissions increases due to removing the TCMs (tpy)	Total offsets available (tpy)	Excess offsets (tpy)
31.99	38.85	6.86

The offsets available from both bus replacements and locomotive conversions total 38.85 tpy of NO_X as shown in Table 7 above. The annual NO_X decrease from the locomotive conversions and school bus replacements are more than adequate to offset the maximum NO_X and VOC emissions increases (31.99 tpy of equivalent NO_X) associated with removing the TCMs. There is a 6.86 tpy excess NO_X emissions offset that will remain available. *See* Table 8.

In addition, Georgia provided information designed to show that the substitute measures are quantifiable, permanent, surplus, enforceable, and contemporaneous. The locomotive conversions and school bus replacements occurring in 2018 are surplus since they have not been relied upon by any attainment plan or demonstration or credited in any RFP demonstration. The converted locomotives must remain operational for a period of ten years from the date placed into revenue service (December 2028). The school buses replaced must be scrapped or rendered permanently disabled or remanufactured to a cleaner emissions standard within 90 days of replacement. Therefore, the emissions reductions obtained are considered permanent. The emissions reductions have been quantified, as shown in Table 7. Fulton County Schools has grant commitments with EPA to replace school buses, while GA EPD and Norfolk Southern Railway, Inc., have a contract that requires locomotive conversions. The locomotive and school replacements occurred within one year of this submittal. EPA is proposing to conclude that the substitute measures are quantifiable, permanent, surplus, enforceable, and contemporaneous as described above to achieve equivalent emissions reductions to offset the potential emission increases related to removing the TCMs.

[23] 85.68 tons/year represents the total NO_X offsets required if all of the TCMs are removed.

[24] Tables 2–4 and 2–7 of Georgia's submittal detail the NO_X and VOC emissions associated with the Intersection Upgrade TCM. The method used for the ABM and off-model calculations can be found in Appendix B of Georgia's submittal.

[25] *See* Appendix F of the September 16, 2019 SIP submittal for additional information related to these programs, including calculations for NO_X emissions reductions.

M. Conclusion Regarding the Non-Interference Analysis

With respect to ozone, EPA is proposing to conclude that the emissions reductions from the offset measures included in the SIP revision are greater than those needed to maintain the status quo in air quality and are permanent, enforceable, quantifiable, surplus, contemporaneous and equivalent. Removing the identified TCMs from the SIP would not worsen ozone air quality because Georgia has provided offsets as compensating, equivalent emissions reductions to negate the predicted increases in emissions from NO_X and VOCs in the Atlanta 2015 8-hour ozone Area. The amount of NO_X reductions obtained from the school bus and locomotive retrofits are more than what is needed to compensate for the small amount of NO_X and VOC increases due to removing the TCMs from the Georgia SIP in the Atlanta Area. In addition, the downward trend in emissions in the Atlanta 2008 8-hour ozone Area are reflected in the NO_X and VOC attainment inventories summarized in Tables 3 and 4. The emissions trend show there are safety margins in the maintenance year 2030 of 157.86 tpd for NO_X and 50.92 tpd for VOC. EPA has preliminarily determined that the SIP revision adequately demonstrates that removing the TCMs from the Georgia SIP for the Atlanta Area would not interfere with Atlanta Area's ability to attain the 2015 8-hour ozone NAAQS or maintain the 1997 and 2008 8-hour ozone NAAQS, or with any other applicable requirement of the CAA.

With respect to NO_2 and $PM_{2.5}$, EPA is proposing to find that the minimal increases in emissions of NO_2, $PM_{2.5}$ and $PM_{2.5}$ precursors would not interfere with attainment or maintenance of the NO_2 or $PM_{2.5}$ NAAQS. In addition, with respect to lead,[26] CO,[27] coarse particulate matter (PM_{10}),[28] and SO_2,[29] EPA is proposing to find that removal of the TCMs from Georgia's SIP would not interfere with attainment or maintenance of the NAAQs.

Therefore, EPA is proposing to find that removal of the TCMs from the Georgia SIP meets the requirements of CAA section 110(*l*) and would not interfere with attainment or maintenance of any NAAQS, or any other requirement of the CAA.

N. Analysis of Updated 2030 MVEBs

This SIP revision includes an update the 2008 8-hour ozone Maintenance Plan to update the mobile emissions inventory and associated 2030 MVEBs due to removing the TCMs. Georgia used the same approach as outlined in the 2008 8-hour ozone Maintenance Plan and redesignation request to determine the portion of the safety margin allocated to the MVEBs for this SIP revision. The on-road emissions inventory and safety margin allocation for the year 2030 were updated, but the MVEB totals remain unchanged. *See* Table 9 below. EPA has evaluated Georgia's revision to the MVEBs and notes that the State went through the appropriate interagency consultation process (of which EPA was a part) to establish these updated budgets per 40 CFR 93.105. As a result, EPA is proposing to approve the updated on-road emissions inventory, safety margins and MVEBs into the Atlanta 2008 8-hour ozone Maintenance Plan.

TABLE 9—UPDATED MVEBS FOR THE ATLANTA 2008 8-HOUR OZONE AREA (tpd)

	2014[30]		2030	
	NO_X	VOC	NO_X	VOC
On-Road Emissions	170.15	81.76	39.63	36.01
Safety Margin Allocation			18.37	15.99
MVEBs with Safety Margin	170.15	81.76	58	52

II. Proposed Action

EPA is proposing to approve Georgia's September 16, 2019, SIP revision requesting removal of certain TCMs from the Georgia SIP applicable within the Atlanta Area. This SIP revision includes updates to the 2008 8-hour ozone standard Maintenance Plan, specifically the on-road emissions inventory and the associated 2030 MVEBs, and measures offsetting the emissions increases due to removal of the TCMs. EPA is proposing to find that removing the TCMs would not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

[26] The entire state of Georgia is designated attainment or unclassifiable/attainment for the lead NAAQS. *See* 40 CFR 81.311. The TCMs are not designed to reduce emissions of SO_2; therefore, removing the TCMs from the SIP would not have any impact on ambient concentrations of lead. EPA proposes to find that removal of the TCMs from Georgia's SIP would not interfere with continued attainment or maintenance of the lead NAAQS.

[27] The entire state of Georgia is designated as attainment or unclassifiable/attainment for the CO NAAQS. *See* 40 CFR 81.311. The TCMs are not designed to reduce emissions of CO; therefore, removing the TCMs from the SIP would not have any impact on ambient concentrations of CO. EPA proposes to find that removal of the TCMs from Georgia's SIP would not interfere with continued attainment or maintenance of the CO NAAQS.

[28] The entire state of Georgia is designated attainment for the PM_{10} NAAQS. The TCMs are not designed to reduce emissions of PM_{10}; therefore, removing the TCMs from the SIP would not have any impact on ambient concentrations of PM_{10}. EPA proposes to find that removal of the TCMs from Georgia's SIP would not interfere with continued attainment or maintenance of the PM_{10} NAAQS.

[29] On June 22, 2010, EPA revised the 1-hour SO_2 NAAQS to 75 ppb which became effective on August 23, 2010. *See* 75 FR 35520. On January 9, 2018, EPA designated most of the state of Georgia, including the counties where the TCMs were implemented, as attainment/unclassifiable for the 2010 SO_2 NAAQS. *See* 83 FR 1098. The TCMs are not designed to reduce emissions of SO_2; therefore, removing the TCMs from the SIP would not have any impact on ambient concentrations of SO_2. EPA proposes to find that removal of the TCMs from Georgia's SIP would not interfere with continued attainment or maintenance of the SO_2 NAAQS.

[30] The 2014 on-road emissions and MVEBs in this chart are shown for illustration purposes only, as no changes were made to the 2014 attainment year emissions inventory due to removing the TCMs.

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 4, 2020.

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–12691 Filed 6–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0042; FRL–10011–05–Region 3]

Air Plan Disapproval; Maryland; Interstate Transport Requirements for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing its proposed action disapproving the interstate transport portion of the state implementation plan (SIP) revision submitted by the State of Maryland (Maryland) to address the infrastructure requirements of the 2010 primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS). EPA proposed disapproval of the interstate transport element of the SIP because it did not contain provisions prohibiting emissions from Maryland that were contributing significantly to or interfering with maintenance of the 2010 SO_2 NAAQS in another state. This action is being taken under the Clean Air Act (CAA).

DATES: The proposed rule, published on April 22, 2020 (85 FR 22381), proposing disapproval of the transport portion of Maryland's August 17, 2016 SIP submission for the 2010 SO_2 NAAQS, is withdrawn as of June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2308. Ms. Powers can also be reached via electronic mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 17, 2016, the Maryland Department of the Environment (MDE), on behalf of the State of Maryland, submitted a SIP revision to EPA to address all of the then applicable CAA section 110(a)(2) requirements for the 2010 SO_2 NAAQS. On June 16, 2020, EPA approved this 2016 SIP submittal, known as an infrastructure SIP, except for certain elements related to nonattainment area requirements and the portion dealing with interstate transport of pollution (section 110(a)(2)(D)(i)(I)). 85 FR 36343. In the final rulemaking, EPA noted that it would take action on the interstate transport portion (110(a)(2)(D(i)(I)) at a later date. On April 22, 2020 (85 FR 22381), EPA proposed to disapprove the interstate transport portion of Maryland's SO_2 infrastructure SIP submission because that portion did not contain adequate provisions prohibiting SO_2 emissions from stationary sources in Maryland which were contributing significantly to nonattainment with, or interfering with maintenance of, the 2010 SO_2 NAAQS in another state. Specifically, EPA identified the Verso Luke Paper Mill (Luke) as the source contributing to violations of the SO_2 NAAQS in West Virginia, based on ambient monitoring data from 2017 to 2019.

Following publication of the proposed disapproval, EPA received from MDE, on May 8, 2020, a letter from Verso, the owner of the Luke facility, surrendering all of its CAA operating permits for the facility. The Verso letter is in the docket for this rulemaking action. The Luke facility had been shut down by Verso on June 30, 2019, and the surrender of its CAA permits means that the facility cannot return to operation without obtaining new CAA permits from Maryland. On this basis, EPA is withdrawing its April 22, 2020 proposed disapproval of the CAA section 110(a)(2)(D)(i)(I) interstate transport portion of Maryland's August 17, 2016 SIP submittal for the 2010 SO_2 NAAQS. EPA will consider this new information and publish a new proposal providing another opportunity for notice and comment after analyzing this recent development. Please note that EPA is not accepting comments on this withdrawal of the April 22, 2020 proposed disapproval. Any comments received on the proposed disapproval will be placed into any new docket related to a future action on the section 110(a)(2)(D)(i)(I) element of the SO_2 infrastructure SIP but will not be answered as part of this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: June 18, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–13584 Filed 6–29–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17, 19, 22, 26, 28, 32, 36, 42, 50, 52, and 53

[FAR Case 2019–013, Docket No. FAR–2019–0013, Sequence No. 1]

RIN 9000—AN96

Federal Acquisition Regulation: Inflation Adjustment of Acquisition-Related Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to further implement the statute which requires an adjustment every five years of statutory acquisition-related thresholds for inflation. The adjustment uses the Consumer Price Index for all urban consumers, and does not apply to the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. DoD, GSA, and NASA are also proposing to use the same methodology to adjust nonstatutory FAR acquisition-related thresholds in 2020.

DATES: Interested parties should submit written comments at the address shown below on or before August 31, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2019–013 to *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2019–013''. Select the link ''Comment Now'' that corresponds with FAR Case 2019–013. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2019–013'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FAR Case 2019–013, in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949, or by email at *michaelo.jackson@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR case 2019–013.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to amend multiple FAR parts to further implement 41 U.S.C. 1908. Section 1908 requires an adjustment every five years (on October 1 of each year evenly divisible by five) of statutory acquisition-related thresholds for inflation, using the Consumer Price Index (CPI) for all urban consumers, except for the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds (see FAR 1.109). As a matter of policy, DoD, GSA, and NASA are also proposing to use the same methodology to adjust nonstatutory FAR acquisition-related thresholds on October 1, 2020.

DoD, GSA, and NASA have published two proposed rules and one final rule that will reduce the complexity and impact of the October 1, 2020, threshold adjustments throughout the FAR. The changes implemented through these rules significantly reduce the number of cite-specific inflation adjustments in the FAR and associated matrix.

FAR Case 2018–004, published as a proposed rule on October 2, 2019 (84 FR 52420) will implement section 217(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and sections 805, 806, and 1702(a) of the NDAA for FY 2018 (Pub. L. 115–91), to increase the micro-purchase threshold (MPT) and simplified acquisition thresholds (SAT) throughout the FAR. The case also changes some stated dollar thresholds to text to ensure continued alignment with the value defined in FAR subpart 2.101.

FAR Case 2018–005, published as a proposed rule October 2, 2019 (84 FR 52428), implements section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 that amended 10 U.S.C. 2306a, Cost or Pricing Data: Truth in Negotiations and 41 U.S.C. 3502, Required cost or pricing data and certification. The case increases the threshold for requesting certified cost or pricing data from $750,000 to $2 million for contracts entered into after June 30, 2018.

FAR Case 2018–007, published as a final rule on May 6, 2020 (85 FR 27088), implements section 821 of the NDAA for FY 2018 (Pub. L. 115–91), which made inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 applicable to existing contracts and subcontracts that contain the clause to implement the statute and are in effect on the date of the adjustment. This case replaces throughout FAR part 52, as appropriate, numerical values based on the value of the MPT or the SAT with the term ''micro-purchase threshold'' or ''simplified acquisition threshold''. When such terms are used, there is a reference to the definition in FAR 2.101. In addition to the MPT and SAT, numerical values for certain thresholds will be replaced with a reference to the applicable FAR text that specifies the numerical threshold.

This is the fourth review of FAR acquisition-related thresholds since the statute was passed on October 28, 2004 (section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005). The last review was conducted under FAR case 2014–022 during FY 2015. The final rule under that case was published in the **Federal Register** on July 2, 2015 (80 FR 38293), effective October 1, 2015.

II. Discussion and Analysis

A. What is an acquisition-related threshold?

This case builds on the review of FAR thresholds in FY 2005, FY 2010, and FY 2015, using the same interpretation of an acquisition-related threshold. 41 U.S.C. 1908 is applicable to ''a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as the [FAR] Council determines.''

There are other thresholds in the FAR that, while not specified in law, nevertheless meet all the other criteria. These thresholds may have their origin in Executive Order or regulation. Therefore, the FAR Council has determined, that in this case, ''acquisition-related threshold'' has a broader meaning, *i.e.,* a threshold that is specified in law, Executive Order, or regulation as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law, Executive Order, or regulation to the procurement of property or services by an Executive agency. DoD, GSA, and NASA conclude that acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification.

Examples of thresholds that are not ''acquisition-related,'' as defined in this case, are thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, liquidated damages, protests, etc. This rule does not address thresholds that are not acquisition-related.

B. What acquisition-related thresholds are not subject to escalation adjustment under this case?

41 U.S.C. 1908 does not permit escalation of acquisition-related thresholds established by the Construction Wage Rate Requirements statute (Davis Bacon Act), the Service Contract Labor Standards statute, or the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979.

Also, the statute does not authorize the FAR to escalate thresholds originating in Executive Order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are first amended.

C. How do the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council (the Councils) analyze a statutory acquisition-related threshold?

If an acquisition-related threshold is based on statute, the matrix at *http://www.regulations.gov* identifies the statute and the statutory threshold, including the original threshold and any FAR revisions.

With the exception of thresholds set by the Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and the United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979, 41 U.S.C. 1908 requires that the FAR Council adjust the acquisition-related thresholds for inflation using the CPI for all urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are only subject to escalation from that date forward. For purposes of this proposed rule, the matrix includes calculation of escalation based on the estimated CPI value for March 2020 (currently projected at 258.6) divided by the CPI for the date of enactment of the statute or regulation (October 2000, for statutes enacted prior to October 1, 2000). The Councils will subsequently adjust as necessary before issuance of the final rule.

Once the escalation factor is applied to the acquisition-related threshold, then the threshold must be rounded as follows:

<$10,000	Nearest $500.
$10,000–<$100,000	Nearest $5,000.
$100,000–<$1 million	Nearest $50,000.
$1 million–<$10 million	Nearest $500,000.
$10 million–<$100 million	Nearest $5 million.
$100 million–<$1 billion	Nearest $50 million.
$1 billion or more	Nearest $500 million.

Note, since the last adjustment in 2015, the calculation formula for over $1 million was revised in 41 U.S.C. 1908.

The calculations in this proposed rule are all based on the base year amount, because escalated amounts in the 2015 rule were subject to rounding and using those amounts as the base would distort future calculations.

In 2015, some thresholds, although subject to inflation calculation, did not actually change, because the inflation in 2015 was insufficient to overcome the rounding requirements—*i.e.,* the escalation factor, when applied, did not cause the escalated values to be high enough to round to the next higher value. However, in FY 2020, some thresholds that did not escalate in 2015 have increased through other statutory actions or will now escalate because of five additional years of inflation. Likewise, some thresholds that were escalated in 2015 will not escalate in 2020.

The thresholds for defining a major system differ for the civilian agencies and DoD. The FAR will continue to escalate the major systems threshold for the civilian agencies, however, DoD has determined that for DoD, the major systems thresholds in the FAR must be consistent with the major systems thresholds in DoD Instruction 5000.02, established in accordance with the authority in 10 U.S.C. 2302d(c)(1). For the purposes of this rule, the thresholds are unchanged.

This proposed rule has been coordinated with the Department of Labor and the Small Business Administration in areas of the regulation for which they are the lead agency.

D. How do the Councils analyze a nonstatutory acquisition-related threshold?

No statutory authorization is required to escalate thresholds that are policy-based within the FAR. For consistency, escalation of the FAR policy acquisition-related thresholds is recommended using the same formula applied to the statutory thresholds, unless there is a valid reason for not doing so.

E. What is the effect of this proposed rule on the most heavily-used thresholds?

This rule includes the following proposed changes to heavily-used thresholds. All these inflation raises assume that the current rate of inflation continues.

- The micro-purchase threshold at FAR 2.101 was raised to $10,000 by statute (see FAR Case 2018–004). No further increase to the basic threshold is made at this time, as there has been insufficient inflation. Paragraph 3(ii) of the definition, for acquisitions to support contingency operations or to facilitate defense against certain attacks, is proposed to increase from $30,000 to $35,000.
- The simplified acquisition threshold was changed to $250,000 by statute (see FAR Case 2018–004). No further increase in the basic threshold is proposed, as there has been insufficient inflation. Paragraph (1)(i) of the definition for acquisitions to support contingency operations or to facilitate defense against certain attacks, is proposed to increase from $750,000 to $800,000.
- The preaward and post-award notices (FAR part 5) remain at $25,000 because of trade agreements.
- The requirements for limiting competition (FAR part 6) to eligible 8(a) awards over $22 million is increased to $25 million.
- The simplified procedures for certain commercial items ceiling (FAR 13.500) will increase from $7 million to $7.5 million. For acquisitions described at 13.500(c), the ceiling will increase from $13.5 million to $15 million.
- The cost or pricing data threshold (FAR 15.403–4) was increased by statute from $750,000 to $2 million (see FAR Case 2018–005) and is not proposed for further increase in this case.
- The prime contractor subcontracting plan (FAR 19.702) floor will increase from $700,000 to $750,000, but the construction threshold of $1.5 million will not change. Standard Form 294 at General Instruction 3 has a reference to $700,000, which will be changed.
- The threshold for reporting first-tier subcontract information including executive compensation will not change (FAR subpart 4.14 and 52.204–10).

This proposed rule is based on a projected CPI of 258.6 for March 2020.

If the actual CPI for March 2020 is higher than 258.6, then additional statutory thresholds may be subject to escalation in the final rule, even though not included in the proposed rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial items, including COTS items, except for the changes in the thresholds themselves.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

The rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule maintains the status quo by adjusting thresholds for actual inflationary increases in the CPI. However, an Initial Regulatory Flexibility Analysis has been performed and is summarized as follows:

This rule will amend the Federal Acquisition Regulation to implement 41 U.S.C. 1908 and to amend other acquisition-related dollar thresholds that are based on policy rather than statute in Order to adjust for the changing value of the dollar. 41 U.S.C. 1908 requires adjustment every five years of statutory acquisition-related dollar thresholds, except for Construction Wage Rate Requirements statute (Davis-Bacon Act), Service Contract Labor Standards statute, and trade agreements thresholds. While reviewing all statutory acquisition-related thresholds, this case presented an opportunity to also review all nonstatutory acquisition-related thresholds in the FAR that are based on policy.

The objective of the case is to maintain the status quo, by adjusting acquisition-related thresholds for inflation. The legal basis is 41 U.S.C. 1908. The statute does not authorize the FAR to escalate thresholds originating in Executive Orders or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive Order or agency regulations are first amended.

This rule will have a minimal impact on small business concerns that submit offers or are awarded contracts by the Federal Government. However, most of the threshold changes proposed in this rule are not expected to have any significant economic impact on small business concerns because the threshold changes are intended to maintain the status quo by adjusting for changes in the value of the dollar. Often any impact will be beneficial, by preventing burdensome requirements from applying to more and more acquisitions, as the dollar loses value.

One threshold change in this rule which may impact small business concerns is the increase of the threshold for requiring a justification or determination for limiting competition to eligible 8(a) participants from $22 million to $25 million. This threshold increase is expected to benefit small businesses under the 8(a) program by expanding their access to contract opportunities. To assess the impact of the increase, data was requested from FPDS–NG. For FY 2017 through FY 2019, there was an average of 300 contracts and calls/orders between $22 million and $25 million. Of these actions, an average of 134 went to small business concerns, 27 of which were 8(a) program participants. We expect that many of these awards will still go to small business concerns and potentially increase the number of awards to 8(a) program participants.

The rule does not impose any new reporting, recordkeeping, or compliance requirements. Changes in thresholds for approved information collection requirements are intended to maintain the status quo and prevent those requirements from increasing over time.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no practical alternatives that will accomplish the objectives of the statute.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2019–013), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does apply. The proposed changes to the FAR do not impose new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* By adjusting the thresholds for inflation, the status quo for the current information collection requirements are maintained under the following OMB clearance numbers: 9000–0006, 9000–0007, 1250–0004, and 1293–0005.

List of Subjects in 48 CFR Parts 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17, 19, 22, 26, 28, 32, 36, 42, 50, 52, and 53

Government Procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17, 19, 22, 26, 28, 32, 36, 42, 50, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 3, 5, 6, 8, 9, 10, 12, 13, 15, 16, 17, 19, 22, 26, 28, 32, 36, 42, 50, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.109 [Amended]

■ 2. Amend section 1.109, in paragraph (d) by removing ''2014–022'' and adding ''2019–013'' in its place.

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 3. Amend section 2.101, in paragraph (b)(2) by—

■ a. In the definition ''Major system'', removing from paragraph (2) ''$ 2 million'' and adding ''$2.5 million'' in its place;

■ b. In the definition ''Micro-purchase threshold'', removing from paragraph (3)(ii) ''$30,000'' and adding ''$35,000'' in its place; and

■ c. In the definition ''Simplified acquisition threshold'', removing from paragraph (1)(i) ''$750,000'' and adding ''$800,000'' in its place.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.1004 [Amended]

■ 4. Amend section 3.1004 by removing from paragraphs (a), (b)(1)(i), and (b)(3) ''$5.5 million'' and adding ''$6 million'' in their places, respectively.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.303 [Amended]

■ 5. Amend section 5.303 in paragraph (a) by removing ''$4 million'' and adding ''$4.5 million'' in its place.

PART 6—COMPETITION REQUIREMENTS

6.204 [Amended]

■ 6. Amend section 6.204 in paragraph (b) by removing ''$22 million'' and adding ''$25 million'' in its place.

6.302–5 [Amended]

■ 7. Amend section 6.302–5 by removing from paragraphs (b)(4) and (c)(2)(iii) ''$22 million'' and adding ''$25 million'' in their places, respectively.

6.303–1 [Amended]

■ 8. Amend section 6.303–1 in paragraph (b) introductory text by removing ''$22 million'' and adding ''$25 million'' in its place.

6.303–2 [Amended]

■ 9. Amend section 6.303–2 by removing from the introductory text of paragraphs (b) and (d) ''$22 million'' and adding ''$25 million'' in their places, respectively.

6.304 [Amended]

■ 10. Amend section 6.304 by—

■ a. Removing from paragraph (a)(1) ''$700,000'' and adding ''$750,000'' in its place;

■ b. Removing from paragraph (a)(2) ''$700,000'' and ''$13.5 million'' and adding ''$750,000'' and ''$15 million'' in their places, respectively;

■ c. Removing from paragraph (a)(3) introductory text ''$13.5 million'', ''$68 million'', and ''$93 million'' and adding ''$15 million'', ''$75 million'', and ''$100 million'' in their places, respectively; and

■ d. Removing from paragraph (a)(4) ''$68 million'' and ''$93 million'' and adding ''$75 million'' and ''$100 million'' in their places, respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404 [Amended]

■ 11. Amend section 8.404 in paragraph (b)(2) by removing ''$550,000'' and adding ''$600,000'' in its place.

8.405–3 [Amended]

■ 12. Amend section 8.405–3 by—

■ a. Removing from paragraph (a)(3)(ii) introductory text ''$112 million'' and adding ''$100 million'' in its place;

■ b. Removing from paragraph (a)(3)(iii) ''$112 million'' and adding ''$100 million'' in its place; and

■ c. Removing from paragraph (a)(7)(v) ''$112 million'' and adding ''$100 million'' in its place.

8.405–6 [Amended]

■ 13. Amend section 8.405–6 by—

■ a. Removing from paragraph (d)(1) ''$700,000'' and adding ''$750,000'' in its place;

■ b. Removing from paragraph (d)(2) ''$700,000'' and ''$13.5 million'' and adding ''$750,000'' and ''$15 million'' in their places, respectively;

■ c. Removing from paragraph (d)(3) introductory text ''$13.5 million'', ''$68 million'', and ''$93 million'' and adding ''$15 million'', ''$75 million'', and ''$100 million'' in their places, respectively; and

■ d. Removing from paragraph (d)(4) ''$68 million'' and ''$93 million'' and adding ''$75 million'' and ''$100 million'' in their places, respectively.

PART 9—CONTRACTOR QUALIFICATIONS

9.104–5 [Amended]

■ 14. Amend section 9.104–5 in paragraph (c) by removing ''$5,000,000'' and adding ''$5.5 million'' in its place.

9.104–7 [Amended]

■ 15. Amend section 9.104–7 by—

■ a. Removing from paragraphs (b) and (c)(1) ''$550,000'' and adding ''$600,000'' in their places, respectively; and

■ b. Removing from paragraph (e) ''$5,000,000'' and adding ''$5.5 million'' in its place.

9.405–2 [Amended]

■ 16. Amend section 9.405–2 in paragraph (b) introductory text by—

■ a. Removing from the second sentence ''$35,000'' and adding ''$40,000'' in its place; and

■ b. Removing from the third sentence ''$35,000'' and adding ''$40,000'' in its place.

9.409 [Amended]

■ 17. Amend section 9.409 by removing ''$35,000'' and adding ''$40,000'' in its place.

PART 10—MARKET RESEARCH

10.001 [Amended]

■ 18. Amend section 10.001 in paragraph (d) by removing ''$5.5 million'' and adding ''$6 million'' in its place.

10.003 [Amended]

■ 19. Amend section 10.003 by removing ''$5.5 million'' and adding ''$6 million'' in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

■ 20. Amend section 12.102 in paragraph (f)(2) by removing ''$19 million'' and adding ''$20 million'' in its place.

12.203 [Amended]

■ 21. Amend section 12.203 by removing ''$7 million ($13 million'' and adding ''$7.5 million ($15 million'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.000 [Amended]

■ 22. Amend section 13.000 by removing ''$7 million ($13 million'' and adding ''$7.5 million ($15 million'' in its place.

13.003 [Amended]

■ 23. Amend section 13.003 by removing from paragraphs (c)(1)(ii) and (g)(2) ''$7 million ($13 million'' and adding ''$7.5 million ($15 million'' in their places, respectively.

13.201 [Amended]

■ 24. Amend section 13.201 in paragraph (g)(1)(ii) by removing ''$30,000'' and adding ''$35,000'' in its place.

13.303–5 [Amended]

■ 25. Amend section 13.303–5 by—

■ a. Removing from paragraph (b)(1) ''$7 million'' and ''$13 million'' and adding ''$7.5 million'' and ''$15 million'' in their places, respectively; and

■ b. Removing from paragraph (b)(2) ''$7 million ($13 million'' and adding ''$7.5 million ($15 million'' in its place.

13.402 [Amended]

■ 26. Amend section 13.402 in paragraph (a) by removing ''$35,000'' and adding ''$40,000'' in its place.

13.500 [Amended]

■ 27. Amend section 13.500 by—

■ a. Removing from paragraph (a) ''$7 million ($13 million'' and adding ''$7.5 million ($15 million'' in its place; and
■ b. Removing from paragraph (c) introductory text ''$13 million'' and adding ''$15 million'' in its place.

13.501 [Amended]

■ 28. Amend section 13.501 by—
■ a. Removing from paragraph (a)(2)(i) ''$700,000'' and adding ''$750,000'' in its place;
■ b. Removing from paragraph (a)(2)(ii) ''$700,000'' and ''$13.5 million'' and adding ''$750,000'' and ''$15 million'' in their places, respectively;
■ c. Removing from paragraph (a)(2)(iii) ''$13.5 million'', ''$68 million'', and ''$93 million'' and adding ''$15 million'', ''$75 million'', and ''$100 million'' in their places, respectively; and
■ d. Removing from paragraph (a)(2)(iv) ''$68 million'' and ''$93 million'' and adding ''$75 million'' and ''$100 million'' in their places, respectively.

PART 15—CONTRACTING BY NEGOTIATION

15.403–1 [Amended]

■ 29. Amend section 15.403–1 in paragraph (c)(3)(iv) by removing ''$19 million'' and adding ''$20 million'' in its place.

15.404–3 [Amended]

■ 30. Amend section 15.404–3 in paragraph (c)(1)(i) by removing ''$13.5 million'' and adding ''$15 million'' in its place.

15.407–2 [Amended]

■ 31. Amend section 15.407–2 by removing from paragraphs (c)(1) and (c)(2) introductory text ''$13.5 million'' and adding ''$15 million'' in their places, respectively.

15.408 [Amended]

■ 32. Amend section 15.408, in Table 15–2, section II, paragraph A.(2) by removing ''$13.5 million'' and adding ''$15 million'' in its place.

PART 16—TYPES OF CONTRACTS

16.503 [Amended]

■ 33. Amend section 16.503 in paragraph (b)(2) by removing ''$112 million'' and adding ''$100 million'' in its place.

16.504 [Amended]

■ 34. Amend section 16.504 by—
■ a. Removing from paragraphs (c)(1)(ii)(D)(*1*) and (D)(*3*) introductory text, ''$112 million'' and adding ''$100 million'' in their places, respectively; and
■ b. Removing from paragraph (c)(2)(i) introductory text ''$13.5 million'' and adding ''$15 million'' in its place.

16.505 [Amended]

■ 35. Amend section 16.505 by—
■ a. Removing from paragraph (b)(1)(i) introductory text ''$3,500'' and adding ''$4,000'' in its place;
■ b. Removing from paragraph (b)(1)(iv) introductory text ''$5.5 million'' twice, and adding ''$6 million'' in their places, respectively;
■ c. Removing from paragraph (b)(2)(i) introductory text and (b)(2)(ii)(A) ''$3,500'' and adding ''$4,000'' in their places, respectively;
■ d. Removing from paragraph (b)(2)(ii)(C)(*1*) ''$700,000'' and adding ''$750,000'' in its place;
■ e. Removing from paragraph (b)(2)(ii)(C)(*2*) ''$700,000'' and ''$13.5 million'' and adding ''$750,000'' and ''$15 million'' in their places, respectively;
■ f. Removing from paragraph (b)(2)(ii)(C)(*3*) introductory text ''$13.5 million'', ''$68 million, and ''$93 million'' and adding ''$15 million'', ''$75 million'' and ''$100 million'' in their places, respectively;
■ g. Removing from paragraph (b)(2)(ii)(C)(*4*) ''$68 million'' and ''$93 million'' and adding ''$75 million'' and ''$100 million'' in their places, respectively; and
■ h. Removing from paragraph (b)(6) ''*$5.5 million*'' and ''$5.5 million'', and adding ''*$6 million*'' and ''$6 million'' in their places, respectively.

16.506 [Amended]

■ 36. Amend section 16.506 by—
■ a. Removing from paragraphs (f) and (g) ''$13.5 million'' and adding ''$15 million'' in their places, respectively; and
■ b. Removing from paragraph (h) ''$5.5 million'' and adding ''$6 million'' in its place.

PART 17—SPECIAL CONTRACTING METHODS

17.108 [Amended]

■ 37. Amend section 17.108 by—
■ a. Removing from paragraph (a) ''$13.5 million'' and adding ''$15 million'' in its place; and
■ b. Removing from paragraph (b) ''$135.5 million'' and adding ''$150 million'' in its place.

17.500 [Amended]

■ 38. Amend section 17.500 in paragraph (c)(2) by removing ''$550,000'' and adding ''$600,000'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.702 [Amended]

■ 39. Amend section 19.702 by removing from paragraphs (a)(1)(i) through (iii) ''$700,000'' and adding ''$750,000'' in their places, respectively.

19.704 [Amended]

■ 40. Amend section 19.704 by—
■ a. Removing from paragraph (a) introductory text ''plan'' and adding ''plan required'' in its place; and
■ b. Removing from paragraph (a)(9) ''$700,000'' and adding ''$750,000'' in its place.

19.708 [Amended]

■ 41. Amend section 19.708 in paragraph (b)(1) by removing ''$700,000'' and adding ''$750,000'' in its place.

19.805–1 [Amended]

■ 42. Amend section 19.805–1 in paragraph (a)(2) by removing ''$7 million'' and ''$4 million'' and adding ''$7.5 million'' and ''$4.5 million'' in their places, respectively.

19.808–1 [Amended]

■ 43. Amend section 19.808–1 in paragraph (a) by removing ''$22 million'' and adding ''$25 million'' in its place.

19.1306 [Amended]

■ 44. Amend section 19.1306 by—
■ a. Removing from paragraph (a)(2)(i) ''$7 million'' and adding ''$7.5 million'' in its place; and
■ b. Removing from paragraph (a)(2)(ii) ''$4 million'' and adding ''$4.5 million'' in its place.

19.1406 [Amended]

■ 45. Amend section 19.1406 by—
■ a. Removing from paragraph (a)(2)(i) ''$6.5 million'' and adding ''$7 million'' in its place; and
■ b. Removing from paragraph (a)(2)(ii) ''$4 million'' and adding ''$4.5 million'' in its place.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1103 [Amended]

■ 46. Amend section 22.1103 by removing ''$700,000'' and adding ''$750,000'' in its place.

22.1701 [Amended]

■ 47. Amend section 22.1701 in paragraph (b)(2) by removing ''$500,000'' and adding ''$550,000'' in its place.

22.1703 [Amended]

■ 48. Amend section 22.1703 by removing from paragraphs (c)(1)(i)(B) and (c)(3)(i)(B) ''$500,000'' and adding ''$550,000'' in their places, respectively.

22.1705 [Amended]

■ 49. Amend section 22.1705 in paragraph (b)(1) by removing ''$500,000'' and adding ''$550,000'' in its place.

PART 26—OTHER SOCIOECONOMIC PROGRAMS

26.404 [Amended]

■ 50. Amend section 26.404 by removing ''$25,000'' and adding ''$30,000'' in its place.

PART 28—BONDS AND INSURANCE

28.102–1 [Amended]

■ 51. Amend section 28.102–1 in paragraph (b)(1) introductory text by removing ''$35,000'' and adding ''$40,000'' in its place.

28.102–2 [Amended]

■ 52. Amend section 28.102–2 in paragraph (c) paragraph heading by removing ''*$35,000*'' and adding ''*$40,000*'' in its place.

28.102–3 [Amended]

■ 53. Amend section 28.102–3 in paragraph (b) by removing ''$35,000'' and adding ''$40,000'' in its place.

PART 32—CONTRACT FINANCING

32.104 [Amended]

■ 54. Amend section 32.104 by removing from paragraphs (d)(2)(i) and (ii) ''$2.5 million'' and adding ''$3 million'' in their places, respectively.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.303–1 [Amended]

■ 55. Amend section 36.303–1 in paragraph (a)(4) by removing ''$4 million'' and adding ''$4.5 million'' in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.709–0 [Amended]

■ 56. Amend section 42.709–0 in paragraph (b) by removing ''$750,000'' and adding ''$800,000'' in its place.

42.709–6 [Amended]

■ 57. Amend section 42.709–6 by removing ''$750,000'' and adding ''$800,000'' in its place.

42.1502 [Amended]

■ 58. Amend section 42.1502 by—

■ a. Removing from paragraph (e) ''$700,000'' twice and adding ''$750,000'' in their places, respectively; and

■ b. Removing from paragraph (f) ''$35,000'' twice and adding ''$40,000'' in their places, respectively.

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

50.102–1 [Amended]

■ 59. Amend section 50.102–1 in paragraph (b) by removing ''$70,000'' and adding ''$75,000'' in its place.

50.102–3 [Amended]

■ 60. Amend section 50.102–3 by—

■ a. Removing from paragraph (b)(4) ''$34 million'' and adding ''$40 million'' in its place; and

■ b. Removing from paragraphs (e)(1)(i) and (ii) ''$70,000'' and adding ''$75,000'' in their places.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 61. Amend section 52.248–3 by revising the date of the clause, and removing from paragraph (h) ''$70,000'' and adding ''$75,000'' in its place.

The revision reads as follows:

52.248–3 Value Engineering—Construction.

* * * * *

Value Engineering—Construction (DATE)

* * * * *

PART 53—FORMS

53.219 [Amended]

■ 62. Amend section 53.219 by removing ''(Rev. 8/2016)'' and adding ''(DATE)'' in its place.

[FR Doc. 2020–13334 Filed 6–29–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 852 and 871

RIN 2900–AQ76

VA Acquisition Regulation: Loan Guaranty and Vocational Rehabilitation and Employment Programs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend and update its VA Acquisition Regulation (VAAR) in phased increments to revise or remove any policy superseded by changes in Federal Acquisition Regulation (FAR), to remove procedural guidance that is internal to VA and move it to the VA Acquisition Manual (VAAM), and to incorporate any new agency specific regulations or policies. These changes seek to streamline and align the VAAR with the FAR and remove outdated and duplicative requirements and reduce burden on contractors. The VAAM incorporates portions of the removed VAAR as well as other internal agency acquisition policy. VA will rewrite certain parts of the VAAR and VAAM, and as VAAR parts are rewritten, will publish them in the **Federal Register**. VA will combine related topics, as appropriate. This rulemaking revises VAAR coverage concerning Loan Guaranty and Vocational Rehabilitation and Employment Programs, as well as an affected part concerning Solicitation Provisions and Contract Clauses.

DATES: Comments must be received on or before August 31, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AQ76 VA Acquisition Regulation: Loan Guaranty and Vocational Rehabilitation and Employment Programs.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rafael N. Taylor, Senior Procurement Analyst, Procurement Policy and Warrant Management Services, 003A2A, 425 I Street NW, Washington, DC 20001, (202) 382–2787. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is issued under the authority of the Office of Federal Procurement Policy (OFPP) Act which provides the authority for an agency head to issue agency acquisition regulations that implement or supplement the FAR.

VA is proposing to revise the VAAR to add new policy or regulatory requirements and to remove any redundant guidance and guidance that is applicable only to VA's internal operating processes or procedures. Codified acquisition regulations may be amended and revised only through rulemaking. All amendments, revisions, and removals have been reviewed and concurred with by VA's Integrated Product Team of agency stakeholders.

The VAAR uses the regulatory structure and arrangement of the FAR and headings and subject areas are consistent with the FAR content. The VAAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, and sections.

The Office of Federal Procurement Policy Act, as codified in 41 U.S.C. 1707, provides the authority for the Federal Acquisition Regulation and for the issuance of agency acquisition regulations consistent with the FAR.

When Federal agencies acquire supplies and services using appropriated funds, the purchase is governed by the FAR, set forth at Title 48 Code of Federal Regulations (CFR), chapter 1, parts 1 through 53, and the agency regulations that implement and supplement the FAR. The VAAR is set forth at Title 48 CFR, chapter 8, parts 801 to 873.

Discussion and Analysis

VA proposes to make the following changes to the VAAR in this phase of its revision and streamlining initiative. For procedural guidance cited below that is proposed to be deleted from the VAAR, each section cited for removal has been considered for inclusion in VA's internal agency operating procedures in accordance with FAR 1.301(a)(2). Similarly, delegations of authority that are removed from the VAAR will be included in VA Acquisition Manual (VAAM) as internal departmental guidance. The VAAM is being created in parallel with these revisions to the VAAR and is not subject to the rulemaking process as they are internal VA procedures and guidance. The VAAM will not be finalized until corresponding VAAR parts are finalized, and therefore the VAAM is not yet available online.

VAAR Part 852—Solicitation Provisions and Contract Clauses

We propose to revise section 852.271–72, Time Spent by Counselee in Counseling Process, to capitalize all principal words in the title and the word ''Contractor'' in the text, to replace the word ''give'' with the phrase ''participate or engage in additional sessions or expend'' of provisions and clauses, and to place a comma after the word ''information'' in the text.

We propose to revise section 852.271–73, Use and Publication of Counseling Results, to capitalize all principal words in the title and the word ''Contractor'' in the text, and to place commas after the words ''contract'' and ''thereto'' in the text.

We propose to revise the title and text of section 852.271–74, Inspection, to change the title to ''Inspection of Instruction, Counseling or Testing Operations,'' to capitalize all principal words in the title and the words ''Contractor'' and ''Veteran'' in the text, to add the word ''shall'' after the word ''Contractor'' and the word ''to'' before the first word ''examine'' in the text, and to add the phrase ''along with any other rights to examine records and conduct inspections in accordance with the Federal Acquisition Regulation and clauses contained in the contract or order.''

We propose to remove and reserve section 852.271–75, Extension of contract period, since it duplicates FAR procedural coverage.

VAAR Part 871— Loan Guaranty and Vocational Rehabilitation and Employment Programs

We propose to remove in its entirety and reserve subpart 871.1, Loan Guaranty and Direct Loan Programs, since subpart's rules are outdated. VA no longer contracts with numerous contractors on a case-by-case basis for the repair and preservation of properties acquired under chapter 37, title 38, U.S.C. VA has awarded a national property management contract that is governed by other provisions of the FAR and VAAR. Because of this removal, we propose to revise the title of the part to Vocational Rehabilitation and Employment Programs.

In section 871.200, Scope of subpart, we propose to delete the reference to Title 10 chapters as they do not apply to VA. We also proposed to remove the following sections since they are more related to matters of program management than acquisition, or they duplicate coverage in FAR: 871.201–2, Requirements when contracts are not required; 871.201–3, Medical services; 871.201–4, Letter contracts; 871.202, Marking and release of supplies; 871.203, Renewals or supplements to contracts; and 871.204, Guaranteed payment. We propose to revise section 871.210 to retitle it as ''Prohibition on advertising—training of Veterans,'' and to remove all programmatic language, but to retain the text of the paragraph prohibiting use of the training facilities in any way to advertise the institution. We propose to remove section 871.211, Information concerning correspondence courses, in its entirety since it is also programmatic information not relevant to acquisition. With the removal of 871.211, we propose to renumber 871.212 to 871.211, and to update paragraph (a)(3) to revise the title of clause 852.271–74 to ''Inspection of Instruction, Counseling or Testing Operations.''

Executive Orders 12866, 13563 and 13771

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rulemaking does not change VA's policy regarding small businesses, does not have an economic impact to individual businesses, and there are no increased or decreased costs to small business entities. On this basis, the proposed rule would not have an economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

List of Subjects

48 CFR Parts 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 871

Government procurement, Loan programs—social programs, Loan programs—veterans, Reporting and recordkeeping requirements, Vocational rehabilitation.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on February 20, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 48 CFR to revise parts 852 and 871 to read as follows:

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 8127–8128, and 8151–8153; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3), 41 U.S.C. 1303; 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Subpart 852.2—Texts of Provisions and Clauses

■ 2. Subpart 852.2 is revised to read as follows:

* * * * *

852.271–72 Time Spent by Counselee in Counseling Process.

As prescribed in 871.211, insert the following clause:

Time Spent by Counselee in Counseling Process (Date)

The Contractor agrees that no counselee referred under the provisions of this agreement will be required to participate or engage in additional sessions or expend any extra time in connection with the counseling process, to supply test results or other information, for purposes other than those specified in this contract.

(End of clause)

852.271–73 Use and Publication of Counseling Results.

As prescribed in 871.211, insert the following clause:

Use and Publication of Counseling Results (Date)

The Contractor agrees that none of the information or data gathered in connection with the services specified in this contract, or studies or materials based thereon or relating thereto, will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of clause)

852.271–74 Inspection of Instruction, Counseling or Testing Operations.

As prescribed in 871.211, insert the following clause:

Inspection of Instruction, Counseling or Testing Operations (Date)

The Contractor shall permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction or the counseling and testing operations as may be necessary and to examine the training facilities, the work of the Veterans in training under this contract, and the records of these operations, along with any other rights to examine records and conduct inspections in accordance with the Federal Acquisition Regulation and clauses contained in the contract or order.

(End of clause)

852.271–75 [Reserved]

* * * * *

PART 871—VOCATIONAL REHABILITATION AND EMPLOYMENT PROGRAMS

■ 3. Part 871 is revised to read as follows:

Subpart 871.1 [RESERVED]

Subpart 871.2—Vocational Rehabilitation and Employment Service

Authority: 38 U.S.C. chapter 31; 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301–1.304.

Subpart 871.1—[RESERVED]

Subpart 871.2—Vocational Rehabilitation and Employment Service

871.200 Scope of subpart.

This subpart establishes policy and procedures for the vocational rehabilitation and employment services as it pertains to the following:

(a) Contracts for training and rehabilitation services.

(b) Approval of institutions (including rehabilitation facilities), training establishments, and employers under 38 U.S.C. chapter 31.

(c) Contracts for counseling services under 38 U.S.C. chapters 30, 31, 32, 35, and 36.

871.201 General.

871.201–1 Requirements for the use of contracts.

The costs for tuition, fees, books, supplies, and other expenses are allowable under a contract with an institution, training establishment, or employer for the training and rehabilitation of eligible Veterans under 38 U.S.C. chapter 31, provided the services meet the conditions in the following definitions:

(a) *Courses of instruction by correspondence* means a course of education or training conducted by mail consisting of regular lessons or reading assignments, the preparation of required written work that involves the application of principles studied in each lesson, the correction of assigned work with such suggestions or recommendation as may be necessary to instruct the student, the keeping of student achievement records, and issuance of a diploma, certificate, or other evidence to the student upon satisfactorily completing the requirements of the course.

(b) *Special services or special courses* means those services or courses that VA requests that are supplementary to those the institution customarily provides for similarly circumstanced non-Veteran students and that the contracting officer considers to be necessary for the rehabilitation of the trainee.

871.205 Proration of charges.

A contract must include the exact formula agreed on for the proration of charges in the event that the Veteran's program is interrupted or discontinued before the end of the term, semester, quarter, or other period, or the program is completed in less time than stated in the contract.

871.206 Other fees and charges.

VA may pay fees and other charges that are not prescribed by law but are required by nongovernmental organizations, such as initiation fees required to become a member of a labor union and the dues necessary to maintain membership incidental to training on the job or to obtaining employment during a period in which the Veteran is a chapter 31 participant, provided there are no facilities feasibly available where the necessary training can be feasibly accomplished or employment obtained without paying such charges. Payment for such fees must be made in accordance with part 813.

871.207 Payment of tuition or fees.

(a) Contracts, agreements, or arrangements requiring the payment of tuition or fees must provide either of the following:

(1) Payment for tuition or fees must be made in arrears and must be prorated in installments over the school year or the length of the course.

(2) An institution may be paid in accordance with paragraph (b) of this section, if the institution operates on a regular term, quarter, or semester basis and normally accepts students only at the beginning of the term, quarter, or semester and if the institution is one of the following:

(i) An institution of higher learning that uses a standard unit of credit recognized by accrediting associations. Such institutions include those that are members of recognized national or regional educational accrediting associations, and those that, although not members of such accrediting associations, grant standard units of credit acceptable at full value without examination by collegiate institutions that are members of national or regional accrediting associations.

(ii) A public tax-supported institution.

(iii) An institution operated and controlled by a State, county, or local board of education.

(b) An institution that meets the exceptions of paragraph (a)(2) of this section and that has a refund policy providing for a graduated scale of charges for purposes of determining refunds may be paid part or all such tuitions or fees for a term, quarter, or other period of enrollment immediately following the date on which the refund expires.

(c) Proration of charges does not apply to a fee for noncontinuing service, such as a registration fee, etc.

(d) The period for which payment of charges may be made is the period of actual enrollment and is subject to the following:

(1) The effective date is the date of the trainee's entrance into training status, except that payment may be made for an entire semester, quarter, or term in institutions operating on that basis if the trainee enters no later than the final date set by the institution for enrolling for full credit.

(2) In those cases where the institution has not set a final date for enrolling for full credit or does not set a date acceptable to VA, payment may be prorated on the basis of attendance, regardless of the refund policy.

(3) If an institution customarily charges for the amount of credit or number of hours of attendance for which a trainee enrolls, payment may be made on that basis when a trainee enrolls after the final date permitted for carrying full credit for the semester or term.

871.208 Rehabilitation facilities.

Charges by rehabilitation facilities for the rehabilitation services provided under 38 U.S.C. chapter 31 are paid in the same manner as charges for educational and vocational services through contract, agreement, or other arrangement.

871.209 Records and reports.

Contracts, agreements, or arrangements must provide for the number and frequency of reports, adequate financial records to support payment for each trainee, and maintenance of attendance and progress records. Such records must be preserved for a period of three years.

871.210 Prohibition on advertising—training of Veterans.

The training of persons under a VA contract or the fact that the United States is using the facilities of the institution for training Veterans must not be used in any way to advertise the institution. References in the advertising media or correspondence of the institution shall be limited to a list of courses under 38 U.S.C. chapter 31 and must not be directed or pointed specifically to Veterans.

871.211 Contract clauses.

(a) Contracting officers must use the following clauses, as appropriate, in solicitations and contracts for vocational rehabilitation and employment services as they pertain to training and rehabilitation services and contracts for counseling services:

(1) 852.271–72, Time Spent by Counselee in Counseling Process.

(2) 852.271–73, Use and Publication of Counseling Results.

(3) 852.271–74, Inspection of Instruction, Counseling or Testing Operations.

(b) See 837.110–70(a) for clause 852.237–74, Non-Discrimination in Service Delivery.

[FR Doc. 2020–12906 Filed 6–29–20; 8:45 am]

BILLING CODE 8320–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 664 (Sub-No. 4)]

Revisions to the Board's Methodology for Determining the Railroad Industry's Cost of Capital

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking; withdrawal.

DATES: The Board is withdrawing the document published on October 4, 2019 (84 FR 53094), as corrected on October 18, 2019 (84 FR 55897), as of June 30, 2020.

ADDRESSES: The docket for this withdrawn rulemaking is available at *www.stb.gov.*

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245–0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On September 30, 2019, as corrected October 11, 2019, the Board issued a notice of proposed rulemaking seeking public comment on its proposal to change its existing methodology for determining the railroad industry's cost of capital. *Revisions to the Board's Methodology for Determining the R.R. Indus.'s Cost of Capital* (*NPRM*), EP 664 (Sub-No. 4) (STB served Sept. 30, 2019), *corrected* (STB served Oct. 11, 2019).[1] Specifically, the Board proposed incorporating an additional model, referred to as the ''Step Multi-Stage Discounted Cash Flow Model'' (Step MSDCF), to complement its use of Morningstar/Ibbotson Multi-Stage Discounted Cash Flow Model (Morningstar/Ibbotson MSDCF) and Capital Asset Pricing Model (CAPM) in determining the cost-of-equity component of the cost of capital. Based upon the comments and replies received in response to the *NPRM,* the Board will withdraw its proposal and discontinue this proceeding.

Background

Each year, the Board determines the railroad industry's cost of capital and then uses this figure in a variety of regulatory proceedings, including the annual determination of railroad revenue adequacy, rate reasonableness cases, feeder line applications, rail line abandonments, trackage rights cases, and rail merger reviews. The annual cost-of-capital figure is also used as an input in the Uniform Railroad Costing System, the Board's general purpose costing system.

The Board calculates the cost of capital as the weighted average of the cost of debt and the cost of equity. *See Methodology to be Employed in Determining the R.R. Indus.'s Cost of Capital,* EP 664, slip op. at 3 (STB served Jan. 17, 2008). While the cost of debt is observable and readily available, the cost of equity (the expected return that equity investors require) can only be estimated.[2] *Id.* Thus, estimating the cost of equity requires relying on appropriate finance models. *Id.*

In 2009, the Board began to calculate the cost of equity based on a simple average of the estimates produced by CAPM and Morningstar/Ibbotson MSDCF. *See Use of a Multi-Stage Discounted Cash Flow Model in Determining the R.R. Indus.'s Cost of Capital,* EP 664 (Sub-No. 1), slip op. at 15 (STB served Jan. 28, 2009). Since that time, the Board has consistently found that the simple average of CAPM and Morningstar/Ibbotson MSDCF has produced a reasonable estimate of the cost of equity used to gauge the financial health of the railroad industry. *See, e.g., R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22) (STB served Sept. 30, 2019); *R.R. Cost of Capital—2017,* EP 558 (Sub-No. 21) (STB served Dec. 6, 2018).

Under CAPM, the cost of equity is equal to $RF + \beta \times RP$, where RF is the risk-free rate of interest,[3] RP is the market-risk premium,[4] and β (or beta) is the measure of systematic, non-diversifiable risk. Under CAPM, the Board calculates the risk-free rate based on the average yield to maturity for a 20-year U.S. Treasury Bond. The estimate for the market-risk premium is based on returns experienced by the S&P 500 since 1926. Lastly, the industry beta is calculated by using a portfolio of weekly, merger-adjusted railroad stock returns for the previous five years.

Under Morningstar/Ibbotson MSDCF, the cost of equity is the discount rate that equates a firm's market value to the present value of the expected stream of cash flows. Morningstar/Ibbotson MSDCF calculates growth of earnings in three stages. In the first stage (years one through five), the qualifying railroad's[5] annual earnings growth rate is assumed to be the median value of its three- to five-year growth rate estimates, as determined by railroad industry analysts and published by the Institutional Brokers Estimate System.[6] In the second stage (years six through 10), the growth rate is the simple average of all of the qualifying railroads' median three- to five-year growth rate estimates in stage one. In the third stage (years 11 and onwards), the growth rate is the long-run nominal growth rate of the U.S. economy. This long-run nominal growth rate is estimated by using the historical growth in real gross domestic product plus the long-run expected inflation rate.

Most recently, in September 2019, the Board used the simple average of CAPM and Morningstar/Ibbotson MSDCF to calculate the cost of capital in *Railroad Cost of Capital—2018,* Docket No. EP 558 (Sub-No. 22). In that proceeding, comments and supporting data from the Association of American Railroads (AAR) showed a large increase in growth rates[7] and the cost of capital over the prior year's figures.[8] *See generally* AAR Comments, Apr. 22, 2019, *R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22). According to AAR, lower tax rates and rail operating changes, including precision scheduled railroading, among other factors, contributed to analysts' higher growth expectations in 2018. *See id.* at V.S. Gray 45–46. In *Railroad Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 3, the Board explained that the validity of its existing methodology was not undermined simply because the cost of capital turned out to be higher than expected. However, the high cost of capital combined with the major operating changes within the rail industry did prompt the Board to explore whether its methodology could be improved with an additional model to capture different information. In particular, the Board considered changes related to growth rates in the second stage or middle horizon (years six through 10) of Morningstar/Ibbotson MSDCF, leading to the *NPRM* in this docket.

As proposed in the *NPRM,* Step MSDCF would calculate growth of earnings in three stages. The first and third stages would be identical to those of Morningstar/Ibbotson MSDCF. Unlike Morningstar/Ibbotson MSDCF, however, the growth rate of the second stage (years six through 10) would be a gradual transition between the first and third stages. The transition would begin at year six and step down or up in equal increments each year towards the terminal growth rate (or third stage). *See NPRM,* EP 664 (Sub-No. 4), slip op. at 5, 10–11. Furthermore, the *NPRM* proposed to calculate the cost of capital pursuant to the weighted average of the

[1] References to the *NPRM* in this decision refer to the corrected decision. The *NPRM* was published in the **Federal Register** on October 18, 2019 (84 FR 55,897). On November 22, 2019, the Board served a clarifying decision with a revised Appendix A detailing the algebraic formula for its proposal.

[2] The Board must make ''an adequate and continuing effort to assist . . . carriers in attaining revenue levels,'' which should, among other objectives, ''permit the raising of needed equity capital.'' 49 U.S.C. 10704(a)(2).

[3] The risk-free rate of interest is an exogenously determined interest rate at which investors may borrow or lend without fear of default.

[4] The market-risk premium is the predicted additional return from investing in the market (in this case, the S&P 500) instead of risk-free investments over the long term. It is calculated by subtracting the risk-free rate from that market return.

[5] The Board determines the railroad industry's cost of capital for a ''composite railroad,'' which is based on data from Class I carriers that meet certain criteria developed in *Railroad Cost of Capital—1984,* 1 I.C.C.2d 989 (1985), as modified by *Revisions to the Cost-of-Capital Composite Railroad Criteria,* EP 664 (Sub-No. 3) (STB served Oct. 25, 2017).

[6] This data can be retrieved from Refinitiv (formerly Thomson ONE Investment Management). *See R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 10.

[7] For example, the second stage growth rate estimate produced by Morningstar/Ibbotson MSDCF produced a value of 19.88%, as compared with the second stage growth rate value of 13.55% reflected in the 2017 cost of capital. *Compare R.R. Cost of Capital—2018,* EP 558 (Sub-No. 22), slip op. at 17, *with R.R. Cost of Capital—2017,* EP 558 (Sub-No. 21), slip op. at 18.

[8] The 2018 cost of capital (12.22%) was 2.18 percentage points higher than the 2017 cost of capital (10.04%).

three models, with CAPM weighted at 50%, Morningstar/Ibbotson MSDCF weighted at 25%, and Step MSDCF weighted at 25%. *Id.* at 3.

In response to the *NPRM,* the Board received comments and replies from AAR and Western Coal Traffic League (WCTL), as well as comments from Roger J. Grabowski, Managing Director of Duff & Phelps. AAR's primary argument is that incorporation of Step MSDCF is unwarranted because the 2018 cost-of-capital figure was a ''data anomaly'' caused by an unusual combination of market factors that affected the inputs used in Morningstar/Ibbotson MSDCF. (AAR Comments 1–2.) According to AAR, Step MSDCF would neither remedy what caused the 2018 anomaly in the first place nor prevent future anomalies of the same kind. (*Id.* at 3.) AAR also identifies problems in Step MSDCF that it argues would need to be corrected before the Board could adopt it. (*Id.* at 23–25.) As an alternative to Step MSDCF, AAR encourages the Board to move the observation date (the date upon which the data for the cost of capital is drawn) from the last Friday in December to the last Friday in January to prevent a future anomaly ''should that rare event reoccur.'' (*Id.* at 3.) WCTL also opposes the Board's Step MSDCF proposal, although for different reasons. WCTL states that Step MSDCF represents, at best, a modest improvement to the Board's cost-of-capital methodology and argues instead that both Step MSDCF and Morningstar/Ibbotson MSDCF should be eliminated from the Board's cost-of-capital methodology completely. (WCTL Comments 2, 19–20.) According to WCTL, the Board should reconfigure its cost-of-capital methodology to rely on CAPM alone, with some additional modifications. (*Id.* at 5–8.) Dr. Grabowski suggests that the third-stage growth rate of MSDCF may be incorrectly estimating the railroads' cost of equity and proposes a modification to it. (Grabowski Comments 1, 4.)

Discussion

Although the Board found that its current cost-of-capital methodology remained reasonable, the Board proposed including Step MSDCF in its cost-of-equity calculation in an attempt to improve its methodology in light of the 2018 cost of capital and recent operating changes within the rail industry. However, the comments in response to the *NPRM* indicate that adding Step MSDCF may not be a necessary change to the Board's cost-of-capital methodology at this time. AAR persuasively argues that the 2018 cost-of-capital figure was an anomaly caused by a mismatch between declining stock prices and lagging growth rate estimates in December, that the Board's approach does not effectively address the anomaly, and that Step MSDCF has technical issues. (*See* AAR Comments 8–13, 20–22, V.S. Villadsen 5–15.) Although WCTL criticizes aspects of AAR's analysis, (WCTL Reply 3–5), it does not dispute AAR's demonstration of the cause of the anomaly. AAR and WCTL agree that adding Step MSDCF to the Board's cost-of-capital methodology would provide little to no meaningful benefit. (*See* AAR Comments 29; WCTL Reply 2.) Given this record, the Board will withdraw its proposal to add Step MSDCF to its cost-of-equity calculation.

The Board will not pursue AAR's suggestion that, in lieu of the proposal, the Board permanently move the observation date for stock price and growth rate inputs from the end of December to the end of the following January. (*See* AAR Comments 26.) The events that occurred in 2018 are by AAR's own account ''unusual,'' (AAR Comments 3), and using a January date raises other issues, such as whether a January data point includes information not available at the end of the prior year. *See Railroad Cost of Capital—2008,* EP 558 (Sub-No. 12), slip op. at 9 (STB served Sept. 25, 2009).[9]

The Board also declines to adopt WCTL's alternative proposals. The Board has explicitly rejected some, such as WCTL's requests to either move to a CAPM-only approach or to change the Morningstar/Ibbotson MSDCF regarding cashflows and growth rates, (WCTL Comments 2), in prior decisions.[10] WCTL's other suggestion, that Morningstar/Ibbotson MSDCF's ''variability'' is a reason to abandon it, (WCTL Comments 16–17), has been implicitly rejected in the Board's decisions finding that Morningstar/Ibbotson MSDCF and CAPM each have their own strengths and weaknesses that, when averaged together, lead to a more robust result.[11] And all of WCTL's arguments, including that the Board should address the generally accepted accounting principles treatment of operating leases as debt for purposes of the cost of capital, (WCTL Comments 29–30),[12] go beyond the scope of this proceeding exploring whether the Board's methodology could be improved with an additional model to capture different information, addressing the types of results that occurred in 2018.[13]

Conclusion

For the reasons discussed above, the Board will withdraw its proposal to incorporate Step MSDCF into its methodology for determining the railroad industry's cost of capital and discontinue this proceeding.

It is ordered:

1. The Board's proposal to modify its existing cost-of-capital methodology by incorporating Step MSDCF is withdrawn. This proceeding is discontinued.

2. Notice of the Board's action will be published in the **Federal Register**.

3. This decision is effective on the date of service.

Decided: June 23, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman. Board Member Oberman commented with a separate expression.

Board Member Oberman, commenting:

While I concur in the Board's decision for the reasons stated therein, I write separately to emphasize my conviction that the Board should continue to closely scrutinize the extent to which equity markets are incentivizing railroads to reduce operating ratios and whether and how such efforts might result in changes to the Board's cost-of-capital figure.

It must be emphasized that the annual cost-of-capital determination directly impacts important aspects of the Board's oversight duties. For example, the Board uses its cost-of-capital determination in a variety of regulatory proceedings, including railroad revenue adequacy determinations, feeder-line applications, rail line abandonments, trackage rights cases, and rail merger reviews. The

[9] As WCTL points out, in *Railroad Cost of Capital—2008,* EP 558 (Sub-No. 12), slip op. at 10, the Board rejected AAR's similar proposal to use March 31, 2009 data, in favor of WCTL's data that was drawn from the end of the year. (WCTL Reply 5.)

[10] *Pet. of the W. Coal Traffic League to Inst. a Rulemaking Proceeding to Abolish the Use of the Multi Stage Discounted Cash Flow Model in Determining the R.R. Indus.'s Cost of Equity Capital,* EP 664 (Sub-No. 2), slip op. at 1–2 (STB served Sept. 28, 2018); *Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 2 (STB served Aug. 14, 2017); *Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 2, 5, 9, 11–13 (STB served Apr. 28, 2017); *Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 11, 14, 17–18, 20 (STB served Oct. 31, 2016); *Use of a Multi-Stage Discounted Cash Flow Model,* EP 664 (Sub-No. 1), slip op. at 12–13.

[11] *See Pet. of the W. Coal Traffic League,* EP 664 (Sub-No. 2), slip op. at 11 (STB served Oct. 31, 2016).

[12] WCTL raised this argument previously in *Railroad Cost of Capital—2015,* EP 558 (Sub-No. 19), slip op. at 4–5 (STB served Aug. 5, 2016), and the Board declined to adopt it.

[13] Dr. Grabowski's suggestion that the third-stage growth rate of Morningstar/Ibbotson MSDCF may incorrectly estimate the railroads' cost of equity, and his proposed new approach to estimating the long-run nominal growth rate, (Grabowski Comments 1, 4), is similarly beyond the scope of the question raised in this proceeding.

annual cost-of-capital figure is also an input into the Uniform Railroad Costing System and therefore has a direct bearing on rate reasonableness cases.

Equity markets' incentivizing railroads to lower operating ratios could translate into increases in the cost-of-capital figure. My concern is that, as a result, a railroad might be found to be revenue inadequate even when, in reality, it is financially healthy. Likewise, a higher cost-of-capital figure can affect whether a particular commodity shipment is above or below the 180% R/VC threshold and is therefore eligible for rate review by the Board.

Separately and in addition to the above matters, the need for continued scrutiny arises from my increasing concern that there is a point beyond which the demands of equity markets for a return of capital may impact the ability of the railroads to meet their common carrier obligations and may deprive the network of the capital it requires to support the needs of the public and the national defense.

Finally, given that the United States and the entire world are presently facing health and economic crises, and that these crises have adversely affected the railroad industry along with the other parts of the economy, I recognize that my above stated concerns are not as immediate as they might otherwise be. Nevertheless, as the economy recovers and the railroad industry regains its full strength, the concerns outlined above may well reoccur and warrant the continued scrutiny I have urged.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–14061 Filed 6–29–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200617–0163]

RIN 0648–BJ79

Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 12

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

ACTION: Proposed rule; request for comments.

SUMMARY: We are proposing to approve and implement specifications submitted by the New England and Mid-Atlantic Fishery Management Councils in Framework Adjustment 12 to the Monkfish Fishery Management Plan. This action would set monkfish specifications for fishing year 2020 and project specifications for the 2021 and 2022 fishing years. This action is needed to establish allowable monkfish harvest levels that will prevent overfishing.

DATES: Public comments must be received by July 30, 2020.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2020–0064, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0064,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). If you are unable to submit your comment through *www.regulations.gov,* contact Allison Murphy, Fishery Policy Analyst, *allison.murphy@noaa.gov.*

Copies of the Framework 12 document, including the Regulatory Flexibility Act Analysis and other supporting documents for the specifications, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The specifications document is also accessible via the internet at: *https://www.nefmc.org/management-plans/monkfish.*

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed under the Monkfish Fishery Management Plan (FMP) by the New England and the Mid-Atlantic Fishery Management Councils. The fishery extends from Maine to North Carolina from the coast out to the end of the continental shelf. The Councils manage the fishery as two management units, with the Northern Fishery Management Area (NFMA) covering the Gulf of Maine and northern part of Georges Bank, and the Southern Fishery Management Area (SFMA) extending from the southern flank of Georges Bank through Southern New England and into the Mid-Atlantic Bight to North Carolina.

The monkfish fishery is primarily managed by landing limits and a yearly allocation of monkfish days-at-sea calculated to enable vessels participating in the fishery to catch, but not exceed, the target total allowable landings (TAL) and the annual catch target (ACT), which is the TAL plus an estimate of expected discards, for each management area. Both the ACT and the TAL are calculated to maximize yield in the fishery over the long term.

Proposed Measures

1. Specifications

We are proposing to adjust the NFMA and SFMA quotas for fishing year 2020 (Table 1), based on the Councils' recommendations. We are also projecting these quotas for fishing years 2021 and 2022. On August 21, 2019, the New England Council's Scientific and Statistical Committee (SSC) recommended acceptable biological catch levels in the NFMA and SFMA for fishing years 2020–2022. The New England Council approved the specifications on September 24, 2019. The Mid-Atlantic Council approved the specifications on October 7, 2019. Both Councils' recommendations for the 2020–2022 monkfish specifications are based on the results of the 2019 assessment update and the recommendations of the SSC.

The Councils recommended a 10-percent increase in the acceptable biological catch and annual catch limit in the NFMA and status quo acceptable biological catch and annual catch limit in the SFMA, when compared to the 2017–2019 specifications. Discards, calculated using a moving average of the most recent three years of data, increased in both areas, but more significantly in the SFMA. Data indicate that this substantial increase is due to the large 2015 monkfish year class being discarded by scallop dredge gear. After accounting for discards, the Councils recommend a 5-percent increase in the total allowable landings for the NFMA and a 35-percent decrease in the total allowable landings for the SFMA. Despite these changes, both Councils recommend no adjustments to day-at-sea allocations or landing limits. The small increase in the NFMA is expected to convert fish that were discarded in previous fishing years into landings. The Councils do not expect the lower SFMA total allowable landings to be constraining because SFMA landings have been lower than the proposed 2020 total allowable landings since 2008.

TABLE 1—PROPOSED FRAMEWORK 12 SPECIFICATIONS

Catch limits	NFMA		SFMA	
	Proposed 2020–2022 specs (mt)	Percent change from 2019	Proposed 2020–2022 specs (mt)	Percent change from 2019
Acceptable Biological Catch	8,351	10	12,316	0
Annual Catch Limit	8,351	10	12,316	0
Management Uncertainty	3 percent		3 percent	
Annual Catch Target (Total Allowable Landings + discards)	8,101	10	11,947	0
Discards	1,477		6,065	107
Total Allowable Landings	6,624	5	5,882	−35

At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. If a quota is exceeded, the regulations at 50 CFR 648.96(d) require the Councils to revise the monkfish ACT if it is determined that the annual catch limit was exceeded in any given year, or for NMFS to revise the monkfish ACT if the Councils fail to take action. We would publish a notice in the **Federal Register** of any revisions to these proposed specifications if an overage occurs. We expect, based on preliminary 2019 year end accounting, that no adjustment is necessary. We will provide notice of the 2021 and 2022 quotas prior to the start of each respective fishing year.

2. Regulatory Corrections

Using our authority under section 305(d) of the Magnuson-Stevens Act, we are clarifying trip declarations requirements at 50 CFR 648.10 for vessels making trip declarations through the interactive voice response system. Regulations require vessels using a vessel monitoring system to submit a trip declaration less than 1 hour prior to leaving port. No timeframe is specified for vessels using the interactive voice response system. This rule proposes to clarify that both declarations must be made less than 1 hour prior to leaving port. This requirement is intended to make the declaration requirements consistent for all monkfish fishery participants.

Additionally, we are using the same authority to correct the monkfish incidental catch limits in four Northeast multispecies exempted fisheries specified in § 648.80. In the monkfish Amendment 5 final rule (76 FR 30265; May 25, 2011), we updated tail-to-whole-weight (landed) conversion factor from 3.32 to 2.91, and applied this updated conversion to the monkfish possession limits in § 648.94. We inadvertently failed to update the incidental monkfish possession limits the Northeast multispecies exempted fisheries at §§ 648.80(a)(6)(1)(B), (a)(10)(i)(D), (b)(3)(ii), and (h)(3)(iii)(A) and intend to correct the incidental monkfish whole weight possession limits, using the 2011 conversion factor.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Monkfish FMP, Framework 12, provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this action, if adopted, would not have a significant economic effect on a substantial number of small entities.

As outlined in the preamble of this rule, the purpose of this action is to implement Framework 12 to the Monkfish FMP. Framework 12 would set monkfish specifications for fishing years 2020–2022. This rule proposes a 5-percent quota increase in the NFMA and a 35-percent quota decrease in the SFMA, when compared to 2019. This framework is needed to establish allowable monkfish harvest levels that will prevent overfishing.

We issued 540 limited access monkfish permits and 1,333 open access monkfish permits as of May 1, 2019. Dealer records indicate that 683 of these permits landed monkfish for commercial sale in calendar year 2018. Ownership data collected from permit holders indicate that there are 1,379 distinct business entities that hold at least one limited-access or open-access monkfish permit, and are directly regulated by the proposed specifications. For entities that held one monkfish permit, 908 entities held an open access permit and 263 entities held a limited access permit. For the purposes of the Regulatory Flexibility Act, we define a small business in the commercial harvesting sector as a firm with receipts (gross revenues) of up to $11 million for commercial fishing businesses. Of the 1,379 entities, all but 12 entities are categorized as small businesses.

This action is expected to have no to slightly positive economic impacts on both large and small entities. In the NFMA, the proposed action could result in modest increases in catch per unit effort; economic theory holds that this will result in increased profitability, all else held constant. In the SFMA, the proposed action is expected to have no economic impact because the proposed quota remains higher than landings in recent years.

This action is not expected to have a significant impact on a substantial number of small entities. Nearly all monkfish entities (99 percent) are considered small entities. Regulated small entities identified in this analysis are expected to experience no impacts to slightly positive impacts. No impacts are expected to the 12 regulated large entities, as they have little dependence on monkfish revenue. Small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profit for any small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing.

Dated: June 17, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.10, revise paragraph (h)(1) introductory text to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(h) * * *

(1) Less than 1 hr prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in paragraph (h) of this section, or an occasional scallop permit as specified in this paragraph (h), and, less than 1 hr prior to leaving port, for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the call-in system and providing the following information:

* * * * *

■ 3. In § 648.80, revise paragraphs (a)(6)(i)(B), (10)(i)(D), (b)(3)(ii), and (h)(3)(iii)(A) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(6) * * *

(i) * * *

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Atlantic herring, up to the amount specified in § 648.204; longhorn sculpin; squid, butterfish, and Atlantic mackerel, up to the amounts specified in § 648.26; spiny dogfish, up to the amount specified in § 648.235; red hake, up to the amount specified in § 648.86(d), monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(10) * * *

(i) * * *

(D) The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

* * * * *

(b) * * *

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/146 lb (66 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts (except for barndoor skate and other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g))—up to 10 percent, by weight, of all other species on board.

* * * * *

(h) * * *

(3) * * *

(iii) * * *

(A) A vessel fishing in the Scallop Dredge Fishery Exemption Areas specified in paragraphs (h)(3)(i) and (ii) of this section may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 146 lb (66 kg) whole weight of monkfish per trip.

* * * * *

[FR Doc. 2020–13499 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 126
Tuesday, June 30, 2020

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Information Collection Renewal; Contract With an Individual for Personal Services

AGENCY: Bureau for Management, Office of Acquisition and Assistance, Policy Division, United States Agency for International Development (USAID).

ACTION: Notice of request for public comment.

SUMMARY: The U.S. Agency for International Development (USAID) seeks Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, USAID requests public comment on this collection from all interested individuals and organizations. This proposed information collection was published in the **Federal Register** on March 24, 2020, allowing for a 60-day public comment period. No comments were received regarding the **Federal Register** Notice. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments must be received no later than July 30, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed information collection to Francisco Escobar, USAID, M Bureau, Office of Acquisition and Assistance, Policy Division at *policytracking@usaid.gov.*

Francisco Escobar, (202) 916–2614, *policytracking@usaid.gov*, Bureau for Management, Office of Acquisition and Assistance—Policy Division, U.S. Agency for International Development.

SUPPLEMENTARY INFORMATION:

OMB No: 0412–0602.

Form: AID 309–1.

Title: Contract with an Individual for Personal Services.

Type of Review: A Renewal Information Collection.

Annual Reporting Burden:

U.S. Respondents: 550.

Total annual U.S. responses: 550.

Total annual hours requested: 137.50 hours.

Marcelle Wijesinghe,

Division Chief, M/OAA/Policy, USAID.

[FR Doc. 2020–13922 Filed 6–29–20; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 25, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 30, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Modernization of Poultry Slaughter Inspection.

OMB Control Number: 0583–0156.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

Need and Use of the Information: FSIS requires that all poultry slaughter establishments develop, implement, and maintain, as part of their HACCP plans, or Sanitation SOPs, or other prerequisite programs, written procedures to prevent contamination of carcasses and parts by enteric pathogens, *e.g., Salmonella* and *Campylobacter,* and fecal material throughout the entire slaughter and dressing operation. FSIS requires that these procedures include sampling for microbial organisms at the pre-chill and post-chill points in the process to monitor establishments' process control for enteric pathogens, except for low volume establishments that are required to test only at post-chill. If the information was not collected or collected less frequently it would reduce the effectiveness of the poultry products inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 289.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 191,204.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–14050 Filed 6–29–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Request for a Renewal of an Information Collection; Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Programs

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request feedback from the general public on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Programs.'' This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Comments on this notice must be received by August 31, 2020 to be assured of consideration.

ADDRESSES:

- *Email: ombofficer@nass.usda.gov.* Include the docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Programs.

OMB Control Number: 0535–0261.

Type of Request: Intent to seek approval to renew an information collection for a period of three years.

Abstract: The proposed information collection activities provides a means to obtain qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving the quality and timeliness of survey data and its analysis. The qualitative feedback will provide useful insights on perceptions and opinions, but are not rigorous statistical surveys that yield quantitative results that can be generalized to the study population. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with data collection efforts, and focus attention on areas where communication, training or changes in operations might improve NASS surveys and publications. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders.

The information collections will target areas such as: Timeliness, usefulness of summarized information, perceptions of products or services, accuracy of information, efficiency and ease of reporting data, and the ease and understandability of data collection instruments. Responses will be assessed to plan and inform efforts to improve or maintain the quality of data collected and reported to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with NASS surveys or data, or may reasonably be expected to have experience with the surveys or data in the near future;
- Information gathered will be used only internally for improving data collection efforts, products and services, and the summarization and publication of data, and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the study population.

This 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. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Respondents: Farmers, ranchers, agri-businesses and data users.

Estimated Number of Respondents: 120,000.

Below we provide projected average estimates for the next three years:

Average Number of Responses per Respondent: 1.

Total Responses: 120,000 (30,000 completed responses and 90,000 refusals).

Frequency of Responses: Once per request.

Average Minutes per Response: 5 to 20 minutes, depending on the survey.

Total Estimated Burden Hours: 8,375.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

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

Signed at Washington, DC, June 18, 2020.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2020–13989 Filed 6–29–20; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Fruits, Nuts, and Specialty Crops Surveys. Minor revisions to burden hours may be needed due to changes in the size of the target population, sample design, or minor changes in questionnaire design.

DATES: Comments on this notice must be received by August 31, 2020 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0039, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Fruits, Nuts, and Specialty Crops Surveys.

OMB Control Number: 0535–0039.

Expiration Date of Approval: December 31, 2020.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices, and disposition; as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

The Fruits, Nuts, and Specialty Crops survey program collects information on acreage, yield, production, price, and value of citrus and non-citrus fruits and nuts and other specialty crops in States with significant commercial production. The program provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. Producers, processors, other industry representatives, State Departments of Agriculture, and universities also use forecasts and estimates provided by these surveys. All questionnaires included in this information collection will be voluntary.

The changes that were made to the fruit and nut commodity surveys at NASS following the program review process that occurs every five years following the Census of Agriculture can be found on the NASS website *https://www.nass.usda.gov/Surveys/Program_Review/2019/Noncitrus-Fruit-and-Tree-Nut-Program.pdf.*

The changes that were made to other programs can be found at *https://www.nass.usda.gov/Surveys/Program_Review/index.php.*

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this information collection is based on approximately 55 individual surveys with expected response times of 10–60 minutes. The frequency of data collection for the different surveys will include annual, seasonal, quarterly, monthly, and one weekly survey. Estimated number of responses per respondent is 1.1. Publicity materials and instruction sheets will account for approximately 5 minutes of additional burden per respondent. Respondents who refuse to complete a survey will be allotted 2 minutes of burden per attempt to collect the data.

Respondents: Producers, processors, and handlers.

Estimated Number of Respondents: 74,000.

Estimated Total Annual Burden on Respondents: 27,000 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

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

Signed at Washington, DC, June 18, 2020.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2020–13990 Filed 6–29–20; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–17–2020]

Foreign-Trade Zone (FTZ) 116—Port Arthur, Texas; Authorization of Production Activity; Port Arthur LNG, LLC (Liquified Natural Gas Processing); Port Arthur, Texas

On February 26, 2020, Port Arthur LNG, LLC submitted a notification of proposed production activity to the FTZ

Board for its facility within FTZ 116, in Port Arthur, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 16054, March 20, 2020). On June 25, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 25, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–14039 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–40–2020]

Foreign-Trade Zone (FTZ) 83—Huntsville, Alabama; Notification of Proposed Production Activity; Haier US Appliance Solutions, Inc. (Household Refrigerators); Decatur, Alabama

Haier US Appliance Solutions, Inc. (Haier) submitted a notification of proposed production activity to the FTZ Board for its facility in Decatur, Alabama. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 18, 2020.

Haier (previously approved as General Electric Company) already has authority to produce household refrigerators within Subzone 83D. The current request would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Haier from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Haier would be able to choose the duty rates during customs entry procedures that apply to household refrigerators (duty-free). Haier would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Cyclopentane; stainless steel blanks; iron and steel refrigerator handle mounts; iron and steel screws; rivets for axle wheels; steel pins; iron and steel retainer clips for compressors; aluminum hot stamping foil; aluminum logos/name plates; steel pin hinges; aluminum wire forms; rubber evaporator fan grommets; steel nutstrip hinges; plastic control knobs; plastic door stops; icemaker receptacle covers; refrigerator bifurcated dryers; refrigerator dryers for sealed systems; capacitors; overload positive temperature coefficient resistor combos; light bulbs; defrost heaters with harness; and, timers (duty rate ranges from duty free to 6.2%). The request indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is August 10, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: June 23, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–14006 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–12–2020]

Foreign-Trade Zone (FTZ) 87—Lake Charles, Louisiana; Authorization of Production Activity; Lake Charles LNG Export Company, LLC (Liquified Natural Gas Processing); Lake Charles, Louisiana

On February 24, 2020, Lake Charles LNG Export Company, LLC, submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 87, in Lake Charles, Louisiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 13859–13860, March 10, 2020). On June 23, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including § 400.14.

Dated: June 23, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–14002 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–41–2020]

Foreign-Trade Zone (FTZ) 22—Chicago, Illinois; Notification of Proposed Production Activity; Volflex, Inc. (Flexible Packaging), Mokena, Illinois

The Illinois International Port District, grantee of FTZ 22, submitted a notification of proposed production activity to the FTZ Board on behalf of Volflex, Inc. (Volflex), located in Mokena, Illinois. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 22, 2020.

The grantee has submitted a separate application for FTZ designation at the company's facility under FTZ 22. The facility is used for the production of flexible packaging in the form of aluminum laminated products. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status material/component and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Volflex from customs duty payments on the foreign-status material/component used in export production. On its domestic sales, for the foreign-status material/component noted below, Volflex would be able to choose the duty rates during customs entry procedures that apply to aluminum radiant barriers, food wrap, and bag stock (duty rate ranges from duty-free to 5.7%). Volflex would be able to avoid duty on foreign-status material which becomes scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is aluminum foil (duty rate 5.8%). The request indicates that aluminum foil is subject to an antidumping/countervailing duty (AD/CVD) order if imported from the People's Republic of China. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that aluminum foil may be subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is August 10, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: June 24, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–14005 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2020]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama Notification of Proposed Production Activity MH Wirth, Inc. (Offshore Drilling Riser Systems); Theodore, Alabama

The City of Mobile, Alabama, grantee of FTZ 82, submitted a notification of proposed production activity to the FTZ Board on behalf of MH Wirth, Inc. (MH Wirth), located in Theodore, Alabama. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 16, 2020.

MH Wirth already has authority to produce and repair offshore drilling riser systems within FTZ 82. The current request would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt MH Wirth from customs duty payments on the foreign-status materials/components used in export production (all of expanded production). On its domestic sales, for the foreign-status materials/components noted below MH Wirth would be able to choose the duty rate during customs entry procedures that applies to offshore drilling riser systems (risers, telescopic joints, test equipment and tools) (duty free). MH Wirth would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include welded carbon/seamless carbon/stainless steel drilling riser pipe (duty free). The request indicates that welded carbon steel riser pipe is subject to an antidumping/countervailing duty (AD/CVD) order if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that certain materials/components are subject to duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is August 10, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: June 22, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–14003 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–837, A–533–828, A–588–068, A–201–831, A–580–852, A–549–820]

Prestressed Concrete Steel Wire Strand From Brazil, India, Japan, Mexico, Republic of Korea and Thailand: Final Results of Expedited Sunset Reviews of Antidumping Duty Finding and Orders

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

SUMMARY: As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) finding on prestressed concrete steel wire strand (PC Strand) from Japan and AD orders on PC Strand from Brazil, India, Mexico, Republic of Korea (Korea), and Thailand would be likely to lead to a continuation or recurrence of dumping, at the levels identified in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: Applicable June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1978 and January 28, 2004, Commerce published in the **Federal Register** notices of the AD finding on PC Strand from Japan and of the AD orders on PC Strand from Brazil, India, Mexico, Korea, and Thailand, respectively.[1] On March 2, 2020,

[1] *See Steel Wire Strand for Prestressed Concrete from Japan; Finding of Dumping,* 43 FR 57599 (December 8, 1978) conducted by the Treasury Department (at the time a determination of dumping resulted in a ''finding'' rather than the later applicable ''order''); *Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Brazil,* 69 FR 4112 (January 28, 2004); *see also*

Commerce published the initiation of the fifth sunset review of the AD finding on PC Strand from Japan, and the third sunset reviews of the AD orders on PC Strand from Brazil, India, Mexico, Korea, and Thailand, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On March 13, 2020, Commerce received timely and complete notices of intent to participate in these sunset reviews from Insteel Wire Products Company, Strand-Tech Manufacturing, Inc., Sumiden Wire Products Corporation, and Wire Mesh Corp. (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested parties claimed interested party status within the meaning of section 771(9)(C) of the Act as U.S. producers in the United States of the domestic like product.[4]

During March 2020 the domestic interested parties filed timely and adequate substantive responses, within the deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive substantive responses from any respondent interested party with respect to any of the *AD Finding/Orders* covered by these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(*2*), Commerce conducted expedited (120-day) sunset reviews of the *AD Finding/Orders.*

Scope of the Finding/Orders

The merchandise covered by the *AD Finding/Orders* is PC Strand from Brazil, India, Japan, Korea, Mexico, and Thailand. The subject merchandise is provided for in subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive. A full description of the scope of the *AD Finding/Orders* is contained in the accompanying Issues and Decision Memorandum.[6]

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *AD Finding/Orders* and the magnitude of the margins likely to prevail if the *AD Finding/Orders* were to be revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *AD Finding/Orders* on PC Strand from Brazil, India, Japan, Korea, Mexico, and Thailand would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted average margins of up to 118.75 percent for Brazil, 102.07 percent for India, 13.30 percent for Japan, 54.19 percent for Korea, 77.20 percent for Mexico, and 12.91 percent for Thailand.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: June 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the AD Finding/Orders
IV. History of the AD Finding/Orders
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Dumping Margins Likely to Prevail
VII. Final Results of Sunset Reviews
VIII. Recommendation

[FR Doc. 2020–14036 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–DS–P

Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from India, 69 FR 4110 (January 28, 2004); *Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from the Republic of Korea,* 69 FR 4109 (January 28, 2004); *Notice of Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Mexico,* 69 FR 4112 (January 28, 2004); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Thailand,* 69 FR 4111 (January 28, 2004). The AD finding on Japan and the AD orders on Brazil, India, Mexico, Korea, and Thailand are collectively referred to as *AD Finding/Orders* for purposes of this notice of the final results of these expedited sunset reviews.

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 12253 (March 2, 2020).

[3] *See* Domestic Interested Parties' Letters, "Prestressed Concrete Steel Wire Strand from Brazil—Domestic Interested Parties' Notice of Intent to Participate" (Intent to Participate for Brazil); "Prestressed Concrete Steel Wire Strand from India—Domestic Interested Parties' Notice of Intent to Participate" (Intent to Participate for India); "Prestressed Concrete Steel Wire Strand from Japan—Domestic Interested Parties' Notice of Intent to Participate" (Intent to Participate for Japan); "Prestressed Concrete Steel Wire Strand from the Republic of Korea—Domestic Interested Parties' Notice of Intent to Participate" (Intent to Participate for Korea); "Prestressed Concrete Steel Wire Strand from Mexico—Domestic Interested Parties' Notice of Intent to Participate" (Intent to Participate for Mexico); "Prestressed Concrete Steel Wire Strand from Thailand—Domestic Interested Parties' Notice of Intent to Participate" (Intent to Participate for Thailand); all dated March 13, 2020.

[4] *See* Intent to Participate for Brazil at 3; *see also* Intent to Participate for India at 3; Intent to Participate for Japan at 3; Intent to Participate for Korea at 3; Intent to Participate for Mexico at 3; and Intent to Participate for Thailand at 3.

[5] *See* Domestic Interested Party's Letters, "Prestressed Concrete Steel Wire Strand From Brazil—Domestic Interested Parties' Substantive Response," dated March 30, 2020; "Prestressed Concrete Steel Wire Strand from India—Domestic Interested Parties' Substantive Response," dated March 30, 2020; "Prestressed Concrete Steel Wire Strand From Japan—Domestic Interested Parties' Substantive Response," dated March 30, 2020; "Prestressed Concrete Steel Wire Strand From the Republic of Korea—Domestic Interested Parties' Substantive Response," dated March 30, 2020; "Prestressed Concrete Steel Wire Strand from Mexico—Domestic Interested Parties' Substantive Response," dated March 27, 2020; and "Prestressed Concrete Steel Wire Strand From Thailand—Domestic Interested Parties' Substantive Response," dated March 27, 2020.

[6] *See* Memorandum, "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Finding/Orders on Prestressed Concrete Steel Wire Strand from Brazil, India, Japan, Mexico, Republic of Korea, and Thailand," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XQ009]

Identification of Nations Engaged in Illegal, Unreported, or Unregulated Fishing, Bycatch, or Shark Fishing

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

ACTION: Notice; request for information.

SUMMARY: NMFS is seeking information regarding nations whose vessels are engaged in illegal, unreported, or unregulated (IUU) fishing, bycatch of protected living marine resources (PLMR), and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks. Such information will be reviewed for the purposes of the identification of nations pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) and ongoing implementation of the Marine Mammal Protection Act Import Provisions.

DATES: Information should be received on or before December 31, 2020.

ADDRESSES: Information may be submitted either by mail to: NMFS Office of International Affairs and Seafood Inspection, Attn.: MSRA Information, F/IS 1315 East-West Highway, Silver Spring, MD 20910, or electronically to: *IUU.PLMR.Sharks@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kent Laborde, phone 301–427–8364, or email *Kent.Laborde@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Moratorium Protection Act requires the Secretary of Commerce (Secretary) to issue a Biennial Report to Congress that identifies nations whose vessels are engaged in IUU fishing, bycatch of PLMR, and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks. NMFS is soliciting information from the public regarding fishing activities by foreign fishing vessels within the last three years that may support identification of those nations in the Biennial Report.

The Shark Conservation Act of 2010 (Pub. L. 111–348) amended the Moratorium Protection Act by requiring action by the United States to strengthen shark conservation globally, including the potential identification of nations fishing for sharks on the high seas. In November 2015, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (IUUFEA) (Pub. L. 114–81) further amended the Moratorium Protection Act by, among other things, expanding the scope of information that can be used for the identification of nations to three years for the IUU fishing and bycatch provisions. In December 2016 the Ensuring Access to Pacific Fisheries Act (EAPFA) (Pub. L. 114–327) amended the Moratorium Protection Act by also expanding the scope of information that can be used for the identification of nations to three years for the shark provisions.

Specifically, the Moratorium Protection Act requires the Secretary to identify in a biennial report to Congress those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding three years, in IUU fishing. The definition of IUU fishing can be found at 50 CFR 300.201 and includes:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, bycatch reduction requirements, shark conservation measures, and data reporting;

(2) In the case of non-parties to an international fishery management agreement to which the United States is a party, fishing activities that would undermine the conservation of the resources managed under that agreement;

(3) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks;

(4) Fishing activity that has an adverse impact on vulnerable marine ecosystems such as seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement; and

(5) Fishing activities by foreign flagged vessels in U.S. waters without authorization of the United States.

In addition, the Secretary must identify in the biennial report those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding three years in fishing activities in waters beyond any national jurisdiction that result in bycatch of a PLMR, or beyond the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States, and that have not implemented measures to address that bycatch that are comparable in effectiveness to U.S. regulatory requirements. In this context, PLMR are defined as non-target fish, sea turtles, sharks, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna. PLMR do not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement. A list of species considered as PLMR for this purpose is available online at: *https://www.fisheries.noaa.gov/webdam/download/94902391.*

Furthermore, the Shark Conservation Act and the EAPFA requires that the Secretary identify nations in a biennial report to Congress whose fishing vessels are engaged, or have been engaged during the preceding three years prior to the biennial report in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.

More information regarding the identification process and how the information received will be used in that process can be found in the regulations codified at 50 CFR 300.200. Note that the timeframe for activities to be considered for IUU fishing, bycatch, and shark identifications has not yet been changed in the implementing regulations to reflect the amendments in the IUUFEA and EAPFA, which extend the timeframe to three years in each case.

The sixth biennial report to Congress was submitted in September 2019 and is available online at: *https://www.fisheries.noaa.gov/webdam/download/96874380.* The report identified three nations for IUU fishing.

In fulfillment of its requirements under the Moratorium Protection Act, NMFS is preparing the seventh biennial report to Congress, which will identify nations whose fishing vessels are engaged in IUU fishing or fishing practices that result in bycatch of PLMR, and/or shark catch in waters beyond any national jurisdiction without a regulatory program comparable to the United States. NMFS is soliciting information from the public that could assist in its identification of nations engaged in activities that meet the criteria described above for IUU fishing, PLMR bycatch, or shark catch in waters beyond any national jurisdiction. Some types of information that may prove useful to NMFS include:

• Documentation (photographs, etc.) of IUU activity or fishing vessels engaged in PLMR bycatch or catch of sharks on the high seas;
• Documentation (photographs, etc.) of fishing vessels engaged in shared PLMR bycatch in any waters beyond the U.S. EEZ;
• Fishing vessel records;
• Trade data supporting evidence that a nation's vessels are engaged in shark catch on the high seas;
• Reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;
• Sightings of vessels included on Regional Fisheries Management Organization (RFMO) IUU vessel lists;
• RFMO catch documents and statistical document programs;
• Nation's domestic regulations for bycatch and shark conservation and management;
• Action or inaction at the national level, resulting in non-compliance with RFMO conservation and management measures, such as exceeding quotas or catch limits, or failing to report or misreporting data of the nation's fishing activities; and
• Reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to identify a particular nation in the biennial report to Congress. As stated previously, NMFS is limited in the time frame for data it may use as the basis of a nation's identification. Appropriate information includes IUU fishing activity, bycatch of PLMR, and shark fishing activity in waters beyond any national jurisdiction that occurred in 2018, 2019 and 2020. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including:

• Corroboration of information;
• Whether multiple sources have been able to provide information in support of an identification;
• The methodology used to collect the information;
• Specificity of the information provided;
• Susceptibility of the information to falsification and alteration; and
• Credibility of the individuals or organization providing the information.

With regard to marine mammals, NMFS is also seeking information on foreign commercial fishing operations that export fish and fish products to the United States and the level of incidental and intentional mortality and serious injury of marine mammals in those fisheries. NMFS will use this information to identify harvesting nations with commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on their frequency of marine mammal interactions as either ''exempt'' or ''export'' fisheries as part of its development of the List of Foreign Fisheries (LOFF). The classification of a fishery on the final LOFF determines which regulatory requirements will be applicable to that fishery for it to receive a comparability finding necessary to export fish and fish products to the United States from that fishery (see 81 FR 54390, August 15, 2016). The Draft 2020 LOFF can be found at: *https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries.*

NMFS has published a final 2017 LOFF (83 FR 11703, March 16, 2018) and a draft 2020 LOFF (85 FR 15116, March 17, 2020), as required by the regulations implementing the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act. The LOFF reflects information received in its response to information requests to nations and the public (82 FR 2961, January 10, 2017) and during the comment period on interactions between commercial fisheries exporting fish and fish products to the United States and marine mammals, and updates and revisions to the draft LOFF (82 FR 39762, August 22, 2017) as well as information that nations supplied during each revision of the LOFF and in their 2019 Progress Report submission.

NMFS will issue a Final LOFF in 2020. NMFS periodically updates the LOFF and is preparing to make Comparability Finding determinations in 2021. Therefore, NMFS is soliciting information from harvesting nations; other foreign, regional, and local governments; regional fishery management organizations; nongovernmental organizations; industry organizations; academic institutions; and citizens and citizen groups to identify commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals. For each item we are requesting you identify the exporting nation as the harvesting nation, the processing or intermediary nation, or both. For fisheries exporting fish and fish products to the United States NMFS is requesting the following information:

• Number of participants,
• Number of vessels,
• Gear type,
• Target species,
• Area of operation,
• Fishing season, and
• Information regarding the frequency of marine mammal incidental and intentional mortality and serious injury.

Such information may include fishing vessel records; reports of on-board fishery observers; information from off-loading facilities, port-side government officials, enforcement agents, transshipment vessel workers and fish importers; government vessel registries; RFMO or intergovernmental agreement documents, reports, and statistical document programs; appropriate catch certification programs; and published literature and reports on commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals.

NMFS will consider all available information, as appropriate. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in revisions to the LOFF or Comparability Finding determinations, including:

• Corroboration of information;
• Whether multiple sources have been able to provide information in support of an identification;
• The methodology used to collect the information;
• Specificity of the information provided;
• Susceptibility of the information to falsification and alteration; and
• Credibility of the individuals or organization providing the information.

Dated: June 24, 2020.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2020–14028 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patent Trial and Appeal Board (PTAB) Appeals

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 20, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Patent Trial and Appeal Board (PTAB) Appeals.

OMB Control Number: 0651–0063.

Form Number(s): (AIA = American Invents; SB = Specimen Book).

- PTO/AIA/31: (Notice of Appeal from the Examiner to the Patent Trial and Appeal Board).
- PTO/SB/31: (Notice of Appeal).
- PTO/AIA/32: (Request for Oral Hearing before the Patent Trial and Appeal Board).
- PTO/SB/32: (Request for Oral Hearing before the Patent Trial and Appeal Board).

Type of Review: Extension and revision of a currently approved information collection.

Number of Respondents: 22,664 respondents.

Average Hours per Response: The USPTO estimates 48,886 responses and that it takes the public approximately .5 to 32 hours to complete this information collection, depending on the complexity of the request. This includes the time to gather the necessary information, prepare the brief, petition, and other papers, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 565,927 hours.

Estimated Total Annual Non-Hour Cost Burden: $48,712,078.

Needs and Uses: The Patent Trial and Appeal Board (PTAB or Board) is established by statute under 35 U.S.C. 6 (American Inventors Protection Act of 1999). This statute directs, in relevant part, that PTAB shall ''on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a).'' PTAB has the authority, under 35 U.S.C. 134 and 306 (America Invents Act) to decide appeals in applications and *ex parte* reexamination proceedings, and under pre-AIA sections of the Patent Act, *i.e.,* 35 U.S.C. 134 and 315, to decide appeals in *inter partes* reexamination proceedings.

The Board's responsibilities under the statute include the review of *ex parte* appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant or patent owner. In *inter partes* reexamination appeals, PTAB reviews examiner's decisions adverse to a patent owner or a third-party requester. PTAB's opinions and decisions are usually publicly available and published on the USPTO website.

The items associated with this information collection include appeals in applications and *ex parte* reexamination proceedings, and appeals in *inter partes* reexamination proceedings that are governed by the regulations in 37 CFR 41. Failure to comply with the appropriate regulations may result in dismissal of the appeal or denial of entry of the submission.

The name of this information collection is being changed from ''PTAB Actions'' to ''PTAB Appeals'' to better reflect the content of the information collection. In addition, this renewal adds three items currently approved in another information collection (0651–0031: Patent Processing) to include all items related to patent appeals in a single information collection. These three items are: Notice of Appeal, Amendment to Cancel Claims During an Appeal, and Request for Oral Hearing. A separate change request will be submitted to remove these three items from that information collection (0651–0031: Patent Processing).

Affected Public: Individuals or households; private sector. The USPTO estimates that the majority (95%) of respondents (*i.e.,* applicants, patent owners, and requesters) will be from the private sector, but that about 5% will be individuals and households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

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 either the title of the information collection or the OMB Control Number 0651–0063.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0063 copy request'' in the subject line of the message.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2020–14071 Filed 6–29–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2019–HQ–0012]

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 30, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military Working Dog Adoption Application; DD Form X810–7; OMB Control Number 0701–XXXX.

Type of Request: New Collection.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 1 hour.

Annual Burden Hours: 200 hours.

Needs and Uses: This form will be used to assess the suitability of U.S. citizens and local and state law enforcement agencies to adopt Department of Defense Military Working Dogs, as outlined in DoDI 5200.31E, Title 10 United States Code 2583, and AFI 31–126. The information is needed to determine if individuals voluntarily submitting the adoption application are suitable adopters for Military Working Dogs, based on the best interests of the Military Working Dog. The information will be used to contact applicants and to interview, screen and select applicants for voluntary adoption.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14080 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2018–HQ–0004]

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 30, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Air Force Recruiting Information Support System—Total Force (AFRISS–TF); OMB Control Number 0701–0150.

Type of Request: Renewal with Change.

Number of Respondents: 100,000.

Responses per Respondent: 1.

Annual Responses: 100,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 25,000 hours.

Needs and Uses: Recruiting requires the collection of specific information on prospective Air Force, Air National Guard, and Air Force Reserve Command enlistees, officers, and health profession personnel entering into duty. The information is used to create the initial personnel record that is used to prescreen and qualify enlistees, line officers, and health professionals fit for service and ultimately induction into one of the three Air Force commands. The information is also collected to process security clearances for those individuals requiring clearances for sensitive and classified positions. The respondents are recruiting applicants of the Air Force who may seek more information or request copies of their personal information. The collection instrument is a list of questions asked by the recruiter that cannot be found on the SF–86; information taken from the SF–86 can complete the rest of the recruit's application. Collections instruments are completed by applicants and recruiters into the system of record as applicable to their recruiting and application purposes. All completed instruments of collection reside in the system of record which has safeguards in place to protect privacy information. The end result of a successful information collection is the successful accession of an applicant in the Air Force and the safe keeping of said applicant's personal information.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14083 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2019–HQ–0003]

Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 30, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Air Force Safety Automated System; AF Form 978; OMB Control Number 0701–XXXX.

Type of Request: New Collection.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 1 hour.

Annual Burden Hours: 200.

Needs and Uses: The Air Force, in accordance with stated policy above, collects mishap and safety-related information via AF Form 978, Supervisor Mishap/Incident Report or direct input into the AFSAS, via the Mishap Worksheet, by an assigned investigator. If an investigator uses the AF Form 978, that information will be manually input into the AFSAS once completed. Information will be collected in the AFSAS from individuals (respondents) who were injured or directly involved in the Mishap, or were an eye witness to the Mishap. On the top of each collection instrument, the OMB control number and expiration date, as well as our privacy act statement are documented for review by respondents. Respondents do not have direct access to the AFSAS or collected information.

Information collected in the AFSAS is utilized directly by assigned Safety Managers and Investigators, to evaluate mishap events for prevention analysis. Each organization staff will compare the information against DoD standards to determine if safety is enforced and to evaluate the safety profile of their organization. Included will be specific recommendations for risk mitigation/reduction in order to preserve assets and save lives. The Air Force Safety Program addresses the maintenance of safe and healthful conditions in the workplace or the occupational environment. It is applicable to all Air Force civilian and military personnel and operations, aviation or occupational functions.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14081 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2019–HQ–0006]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 30, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Corps Water Infrastructure Financing Program (CWIFP) Preliminary Application and Application; OMB Control Number 0710–XXXX.

Type of Request: New.

Number of Respondents: 15.

Responses per Respondent: 1.

Annual Responses: 15.

Average Burden per Response: 3.33 hours.

Annual Burden Hours: 50.

Needs and Uses: The Preliminary Application information collection requirement is necessary to (1) validate the eligibility of the prospective borrower and the proposed project, (2) perform a preliminary creditworthiness assessment, (3) perform a preliminary engineering and environmental feasibility assessment, and (4) evaluate the project against the selection criteria and identify which projects U.S. Army Corps of Engineers (USACE) will invite to submit applications. The Preliminary Application addresses the CWIFP eligibility criteria, CWIFP selection criteria, and identifies other specific information that must be provided to USACE to be considered for credit assistance. The Preliminary Application provides USACE with sufficient information to make a project selection and invite prospective borrowers to submit applications. Based on evaluation of the Preliminary Application, USACE will invite to submit an Application only those eligible projects that it expects to proceed to closing. Only those entities who are invited by USACE to submit an Application should proceed with the Application process. The Application provides USACE with information to assess the creditworthiness of both the applicant and project, identify the project's engineering and financial risk, negotiate the terms and conditions of the credit assistance, and calculate the amount of budget authority that will be needed to fund the project(s).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket

ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14084 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2020–HQ–0012]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 31, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Joshua Kim, Records Management Division, 9301 Chapek Rd., Bldg. 1458, Fort Belvoir, VA 22060–5605 or call (571) 515–0224.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Flood and Coastal Storm Damage Survey; OMB Control Number 0710–0017.

Needs and Uses: The USACE provides flood risk management structural and nonstructural mitigation, planning and tech services to communities, residents and businesses at risk of flooding. Flood damage surveys are administered by USACE and its contractors to determine the impacts and potential impacts of flooding and to determine how communities, residents, and businesses respond to flooding. The data are used for estimating damage for factors such as depth of flooding, construction types, and different occupancies of use, which influences project formulation and budgeting.

Affected Public: Residents, property owners, business, non-governmental organizations, Local Governments.

Annual Burden Hours: 1,825.

Number of Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Average Burden per Response: 36.5 minutes.

Frequency: On occasion.

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14074 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–04]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–04 with attached Policy Justification and Sensitivity of Technology.

Dated: June 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

April 30, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-04 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Republic of the Philippines for defense articles and services estimated to cost $450 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 20-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of the Philippines

(ii) *Total Estimated Value:*

Major Defense Equipment *	$375 million
Other	$ 75 million
Total	$450 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Six (6) AH-1Z Attack Helicopters
Fourteen (14) T-700 GE 401C Engines (12 installed, 2 spares)
Seven (7) Honeywell Embedded Global Positioning Systems/Inertial Navigation (EGIs) w/Precise Positioning Service (PPS) (6 installed, 1 spare)
Six (6) AGM-114 Hellfire II Missiles
Twenty-six (26) Advanced Precision Kill Weapon System (APKWS) All Up Rounds

Non-MDE: Also included is communications equipment, electronic warfare systems, AN/AAR-47 Missile and Laser Warning System, AN/ALE-47 Countermeasure Dispenser System, AN/APR-39 Radar Warning Receiver, seven (7) M197 20mm machine guns (6 installed, 1 spare), Target Sight System (TSS), 5,000 20mm Semi-Armor Piercing High Explosive Incendiary (SAPHEI) rounds, two (2) AIM-9M Sidewinder training missiles, MJU-32 and MJU-38 Magnesium Teflon pyrotechnic decoy flares, flight training device, LAU-68 rocket launchers, LAU-61 rocket launchers, support equipment, spare engine containers, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (PI-P-SAB)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 30, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Philippines—AH-1Z Attack Helicopters and Related Equipment and Support

The Government of the Philippines has requested to buy six (6) AH-1Z attack helicopters; fourteen (14) T-700 GE 401C engines (12 installed, 2 spares); seven (7) Honeywell Embedded Global Positioning Systems/Inertial Navigation (EGIs) w/Precise Positioning Service (PPS) (6 installed, 1 spare); six (6) AGM-114 Hellfire II missiles; and twenty six (26) Advanced Precision Kill Weapon System (APKWS) all up rounds. Also included is communications equipment; electronic warfare systems, AN/AAR-47 Missile and Laser Warning System, AN/ALE-47 Countermeasure Dispenser System, AN/APR-39 Radar Warning Receiver, seven (7) M197 20mm machine guns (6 installed, 1 spare), Target Sight System (TSS), 5,000 20mm Semi-Armor Piercing High Explosive Incendiary (SAPHEI) rounds, two (2) AIM-9M Sidewinder training missiles, MJU-32 and MJU-38 Magnesium Teflon pyrotechnic decoy flares, flight training device, LAU-68 rocket launchers, LAU-61 rocket launchers, support equipment, spare engine containers, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics and program support. The estimated cost is $450 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a friendly country that continues to be an important force for political stability, peace, and economic progress in South-East Asia.

The Philippines is considering either the AH-1Z or the AH-64E to modernize its attack helicopter capabilities. The proposed sale will assist the Philippines in developing and maintaining strong self-defense, counterterrorism, and critical infrastructure protection capabilities. The Philippines will have no difficulty absorbing this equipment and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Bell Helicopter, Textron, Fort Worth, Texas; and General Electric Company, Lynn, Massachusetts. Offsets may be a requirement of doing business in the Philippines; however, offsets are negotiated directly between the Original Equipment Manufacturers or other vendors and the Government of the Philippines, and further details are not known at this time.

Implementation of this proposed sale will require multiple trips by U.S. Government and contractor representatives to participate in program and technical reviews plus training and maintenance support in country, on a temporary basis, for a period of twenty-four (24) months. It will also require one (1) contractor support representative to reside in country for a period of two (2) years to support this program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The following components and technical documentation for the AH-1Z helicopter program are classified as listed below:

a. The Z-model has an integrated avionics system (IAS) which includes two (2) mission computers and an automatic flight control system. Each crew station has two (2) 8x6-inch multifunction liquid crystal displays (LCD) and one (1) 4.2x4.2-inch dual function LCD display. The communications suite will have Ultra High Frequency Very High Frequency (UHF/VHF) radios with associated communications equipment. The navigation suite includes a Precise Positioning System (PPS), Honeywell embedded GPS inertial navigation system (EGI), a digital map system and a low-airspeed air data subsystem, which allows weapons delivery when hovering.

b. The crew is equipped with the Optimized Top Owl (OTO) helmet-mounted sight and display system. The OTO has a Day Display Module (DDM) and a Night Display Module (NDM). The AH-1Z has survivability equipment including the AN/AAR-47 Missile Warning and Laser Detection System, AN/ALE-47 Counter Measure Dispensing System (CMDS) and the AN/APR-39 Radar Warning Receiver (RWR) to cover countermeasure dispensers, radar warning, incoming/on-way missile warning and on-fuselage laser-spot warning systems.

c. The following performance data and technical characteristics are classified as annotated:

AH-1Z Airframe	
—Countermeasure capability	SECRET
—Counter-countermeasures capability	SECRET
—Vulnerability to countermeasures	SECRET
—Vulnerability to electromagnetic pulse from nuclear environmental effects	SECRET
—Radar signature	SECRET
—Infrared signature	SECRET
—Acoustic signature	CONFIDENTIAL
—Ultraviolet signature	SECRET
—Mission effectiveness against threats	CONFIDENTIAL
Other Systems	
—Tactical Air Moving Map Capability (TAMMAC)	Up to SECRET
—Honeywell Embedded GPS & INS (EGI) w/PPS	Up to SECRET
—APX-123 IFF Transponder	Up to SECRET
—DVR	Up to SECRET
—APR-39 Radar Warning System (RWS)	Up to SECRET
—AN/AAR-47 Missile/Laser Warning System (MLWS)	Up to SECRET
—AN/ALE-47 Countermeasures Dispenser Set (CMDS)	Up to SECRET

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Republic of the Philippines can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Republic of the Philippines.

[FR Doc. 2020–14062 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–60]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–60 with attached Policy Justification.

Dated: June 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 2 3 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-60 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the United Arab Emirates for defense articles and services estimated to cost $150 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19-60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0 million
Other	$150 million
Total	$150 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Foreign Military Sales Order (FMSO) II to provide funds for blanket order requisitions under a Cooperative Logistics Supply Support Agreement (CLSSA) for common spares/repair parts to support the United Arab Emirates' fleet of AH-64 Apache, UH-60 Black Hawk, and CH-47 Chinook aircraft, additional support; and other related elements of logistics and program support.

(iv) *Military Department:* Army (AE-B-KRJ)

(v) *Prior Related Cases, if any*: TC-B-KVN, AE-B-KAQ, AE-B-KRF, AE-B-KRH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: None

(viii) *Date Report Delivered to Congress:* April 23, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates (UAE)—Foreign Military Sales Order (FMSO) II Case

The Government of the United Arab Emirates has requested a Foreign Military Sales Order (FMSO) II to provide funds for blanket order requisitions under a Cooperative Logistics Supply Support Agreement (CLSSA) for common spares/repair parts to support the United Arab Emirates' fleet of AH-64 Apache, UH-60 Black Hawk, and CH-47 Chinook aircraft, additional support; and other related elements of logistics and program support. The estimated cost is $150 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important partner in the region. This sale is consistent with U.S. initiatives to provide key partners in the region with modern systems that will enhance interoperability with U.S. forces and increase security.

The proposed sale will allow the UAE Joint Aviation Command to continue to purchase needed spare/repair parts to maintain UAE's fleet of AH-64 Apache, UH-60 Black Hawk, and CH-47 Chinook helicopters as part of the Cooperative Logistics Supply Support Agreement (CLSSA) program. The UAE will have no difficulty absorbing these defense articles and services into its armed forces.

The proposed sale will not alter the basic military balance in the region.

There are no principal contractors involved with this potential sale. There are no known offset agreements in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to the UAE.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2020–14063 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the Department of Defense Board of Actuaries (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being renewed pursuant to 10 U.S.C. 183 and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix) and 41 CFR 102–3.50(a). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/.* The Board provides advice and recommendations on matters relating to the DoD Military Retirement Fund, the DoD Education Fund, the DoD Voluntary Separation Incentive Fund, and such other funds as the Secretary of Defense shall specify.

Pursuant to 10 U.S.C. 183(b), the Board shall be composed of three members from among qualified professional actuaries who are members of the Society of Actuaries. All members of the Board are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. A member of the Board who is not an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board. All members are entitled to reimbursement for official Board-related travel and per diem.

The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: June 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14000 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–74]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–74 with attached Policy Justification and Sensitivity of Technology.

Dated: June 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

MAY 0 7 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-74 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Egypt for defense articles and services estimated to cost $2.3 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19-74

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Egypt.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$2.0 billion
Other	$ .3 billion
Total	$2.3 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Eighty-eight (88) T700-GE-701D Engines (86 remanufactured, 2 spares)

Forty-seven (47) AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAR-11 Modernized Pilot Night Vision Sensors (MTADS/PNVS) (43 remanufactured, 2 new, 2 spares)

Forty-five (45) AAR-57 Common Missile Warning Systems (CMWS) (43 new, 2 spares) Ninety-two (92) Embedded Global Positioning Systems/Inertial Navigation (EGI) (86 new, 6 spares)

Non-MDE: Also included are AN/AVR-2B Laser Detecting Sets, AN/APX-119 transponders, Identify Friend or Foe (IFF), AN/APN-209 radar altimeters, AN/ARN-149 Automatic Direction Finders, UHF/VHF radio, tactical AN/ARC-201E radio, APR-39 Radar Warning Sets, Improved Data Modems IDM-401, Enhanced Image Intensifiers EI2, Hellfire launchers M299, 2.75 inch 19 tube rocket launchers, M230 automatic guns, M230 spare gun barrels, MT06 initiators, cartridge actuated JAU-59, training devices, helmets, simulators, generators, transportation, wheeled vehicles and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (EG-B-VGC).

(v) *Prior Related Cases, if any*: EG-B-UTN, EG-B-UZR, EG-B-VGO, EG-B-VGJ, EG-B-VBT

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* May 7, 2020

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt—AH-64E Refurbished Apache Attack Helicopters and Related Equipment and Support

The Government of Egypt has requested to buy equipment to refurbish forty-three (43) AH-64E Apache attack helicopters. This includes: eighty-eight (88) T700-GE-701D engines (86 remanufactured, 2 spares); forty-seven (47) AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAR-11 Modernized Pilot Night Vision Sensors (MTADS/PNVS) (43 remanufactured, 2 new, 2 spares); forty-five (45) AAR-57 Common Missile Warning Systems (CMWS) (43 new, 2 spares); and ninety-two (92) Embedded Global Positioning System/Inertial Navigation Systems (EGI) (86 new, 6 spares). Also included are AN/AVR-2B Laser Detecting Sets, AN/APX-119 transponders, Identify Friend or Foe (IFF), AN/APN-209 radar altimeters, AN/ARN-149 Automatic Direction Finders, UHF/VHF radio, tactical AN/ARC-201E radio, APR-39 Radar Warning Sets, Improved Data Modems IDM-401, Enhanced Image Intensifiers EI2, Hellfire launchers M299, 2.75 inch 19 tube rocket launchers, M230 automatic guns, M230 spare gun barrels, MT06 initiators, cartridge actuated JAU-59, training devices, helmets, simulators, generators, transportation, wheeled vehicles and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated total cost is $2.3 billion.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a friendly country that continues to be an important strategic partner in the Middle East.

Egypt intends to use these refurbished AH-64 helicopters to modernize its armed forces to address the shared U.S.-Egyptian interest in countering terrorist activities emanating from the Sinai Peninsula, which threaten Egyptian and Israeli security and undermine regional stability. This sale will contribute to Egypt's military goal to update its capability while further enhancing greater interoperability between Egypt, the U.S., and other allies. Egypt will have no difficulty sustaining these refurbished aircraft.

The proposed sale will not alter the basic military balance in the region.

The principal contractors involved in this program are the Boeing Company, Meza, AZ, and Lockheed Martin Corporation, Orlando, FL. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-74

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The highest classification of the AH-64 Apache Attack Helicopter AH-64 Apache helicopter is CONFIDENTIAL and the highest classification of data and information is SECRET. The AH-64 Apache helicopter weapon system contains communications and target identification equipment, navigation equipment, aircraft survivability equipment, displays, and sensors. The airframe itself does not contain sensitive technology; however, the pertinent equipment listed below will be either installed on the aircraft or included in the sale:

a. The AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAQ-11 Pilot Night Vision Sensor (MTADS/PNVS) provides day, night, and limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), EI(2) television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations.

b. The AAR-57 Common Missile Warning System (CMWS) detects energy emitted by threat missiles in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate countermeasures. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD).

c. The AN/ APR-39 Radar Signal Detecting Set is a system that provides warnings of radar-directed air defense threats and allows appropriate countermeasures. This is the 1553 databus-compatible configuration.

d. The AN/AVR-2B Laser Warning Set is a passive laser warning system that receives, processes, and displays threat information resulting from aircraft illumination by lasers on the multi-functional display.

e. The Embedded Global Positioning System/Inertial Navigation System plus Multi Mode Receiver (EGI+MMR). The aircraft has two EGIs which use internal accelerometers, rate gyro measurements, and external sensor measurements to estimate the aircraft state, provides aircraft flight and position data to aircraft systems. The EGI is a velocity-aided, strap down, ring laser gyro based inertial unit. The EGI unit also houses a GPS receiver.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection of this technology as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

4. All defense articles and services listed in this transmittal has been authorized for release and export to Egypt.

[FR Doc. 2020–14060 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0062]

Proposed Collection; Comment Request

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Secretary of Defense

announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 31, 2020.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Ms. Angela James, Washington Headquarters Services, Executive Services Directorate, Directives Division, Office of Information Management, 4800 Mark Center Drive, Suite 03F09, Alexandria, VA 22311 or call 571–372–7574.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation); OMB Control Number 0704–XXXX.

Needs and Uses:

A. Purpose

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. DoD will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

DoD will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. DoD may also utilize observational techniques to collect this information.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.

Affected Public: Individuals or households.

Annual Burden Hours: 50,000.

Number of Respondents: 300,000.

Responses per Respondent: 1.

Annual Responses: 300,000.

Average Burden per Response: 10 minutes.

Frequency On occasion.

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–14070 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishing a TRICARE Low Back Pain and Physical Therapy Demonstration

AGENCY: Department of Defense.

ACTION: Notice of demonstration project.

SUMMARY: The Director, Defense Health Agency (DHA), has approved the creation of a demonstration to waive cost-sharing for up to three physical therapy (PT) visits for TRICARE beneficiaries with low back pain (LBP). The purpose of the demonstration is to encourage the uptake of PT services for the treatment and management of LBP and to incentivize beneficiaries towards higher-value care and away from lower-value care. This demonstration will operate in 10 states, test whether waiving cost-sharing increases the uptake of PT services among patients with LBP, and measure the impact of LBP on lower-value services such as imaging, opioids, and surgery.

DATES: This demonstration project will be effective January 1, 2021, through December 31, 2023, unless terminated earlier by the Director, DHA, or designee.

FOR FURTHER INFORMATION CONTACT: Ms. Erica Ferron, Medical Benefits and Reimbursement Section, TRICARE Health Plan, telephone (303) 676–3626. *erica.c.ferron.civ@mail.mil.* Questions regarding payment of specific claims should be addressed to the appropriate

TRICARE contractor (contact information is available at *https://tricare.mil/contactus*).

SUPPLEMENTARY INFORMATION:

A. Background

LBP is a common symptom that may be caused by a variety of underlying conditions, including muscle strains, disc degeneration, sciatica, scoliosis, arthritis, and fibromyalgia. Risk factors include age, fitness level, weight, pregnancy, genetics, and occupation. Acute LBP includes pain lasting up to four weeks from onset of symptoms, subacute LBP refers to pain lasting from 4 to 12 weeks, and chronic LBP persists beyond 12 weeks. With rest and self-care, most cases of LBP resolve within six weeks of onset of symptoms, although approximately 20 percent of cases of acute LBP transition to chronic LBP and require additional interventions. Due largely to its high prevalence, LBP results in significant costs. According to a 2016 review by Dieleman et al. published in the Journal of the American Medical Association, low back and neck pain accounted for $87.6 billion in estimated health care spending in 2013 (the third-highest spending category behind diabetes and ischemic heart disease). Combined direct and indirect costs (*e.g.,* lost wages, inability to work, and decreased productivity) of LBP are estimated to be over $100 billion per year, according to a 2006 study by JN Katz published in the Journal of Bone and Joint Surgery.

Many national professional medical associations, national expert opinion organizations, and providers have developed treatment guidelines and best practices for treating LBP. These guidelines are intended to maximize patient outcomes and quality of life, as well as increase the value of LBP treatments and diagnostic services. Increasing the value of health care refers to improving patients' quality of care and outcomes, improving patients' access to care, and reducing overall costs of care. In contrast, low-value care refers to interventions that: Are not proven to benefit patients; may harm patients; result in unnecessary costs; or waste health care resources. Several types of LBP treatments and diagnostic services are classified as low-value or inappropriate care in the absence of red-flag symptoms, such as imaging services (*e.g.,* x-rays, computed tomography scans, and magnetic resonance imaging scans) before six weeks from onset of symptoms, surgery for non-specific back pain, opioids as a first- or second-line treatment, and prolonged bedrest. Use of low-value services increases health care costs and patients who receive low-value, inappropriate care for LBP may experience worse outcomes than patients who receive conservative, higher-value measures such as PT. Low-value care is particularly pernicious for LBP patients, as low-value interventions, such as imaging, may lead to further low-value care, such as surgery, with the accompanying potential for negative outcomes or side effects. Likewise, the use of low-value care such as opioids instead of higher-value care, such as PT, may cause the patient to transition from acute pain to chronic pain and may lead to opioid use disorder.

This demonstration was created, in part, due to a TRICARE Health Plan (THP) analysis that found TRICARE beneficiaries who attended PT and occupational therapy (OT) did so at the same rate across beneficiary classes and age groups (*i.e.,* similar proportions attended 1 to 3 visits, 3 to 5 visits, more than 12 visits, etc.); that is, beneficiaries who attended at least one therapy visit tended to attend additional visits at the same rate. However, the percentage of beneficiaries who attended at least one therapy visit varied across beneficiary classes: Active Duty Service members (ADSMs) attended PT or OT at a rate of 65 percent, Active Duty family members (ADFMs) at a rate of 42 percent, and non-active duty dependents (NADDs), which includes retirees and all non-ADFM or non-ADSM beneficiaries, at a rate of 38 percent. Notably, NADD beneficiaries have the highest cost-sharing requirements for PT and OT, and the lowest rates of use. Therefore, this demonstration hypothesizes that incentivizing PT services for patients with LBP will result in an increase in the initial and total use of PT services among TRICARE beneficiaries currently subject to cost-sharing. Additionally, the demonstration hypothesizes that this increase in PT uptake will reduce low-value interventions for LBP, reduce the overall cost of treating LBP, and improve patient outcomes.

B. Description of the Demonstration

This demonstration waives cost-sharing for up to three PT visits for patients with LBP. To be eligible for the demonstration, TRICARE beneficiaries must have a primary diagnosis of LBP, reside and receive PT services in one of the selected demonstration states, and be referred by a TRICARE-authorized provider to receive PT services currently covered by TRICARE. TRICARE will promulgate a list of ICD–10 diagnosis codes in the implementing instructions. Additionally, only new PT "episodes" will be eligible for waived cost-sharing (*i.e.,* a patient who is receiving PT services before the beginning of the demonstration may not receive waived cost-sharing for those services once the demonstration starts). Provider reimbursement under this demonstration will follow current TRICARE reimbursement procedures for PT. Likewise, after the third PT visit with waived cost-sharing, beneficiary cost-sharing will follow current cost-sharing methodologies specified in the TRICARE Reimbursement Manual.

There is no limitation on the number of weeks from onset of symptoms to receiving PT services under this demonstration (*i.e.,* PT visits for acute, subacute, or chronic LBP may be eligible for waived cost-sharing), as early access to PT may result in overall lower health care utilization and LBP-related costs within the Military Health System. This supports the demonstration hypothesis that increased uptake of PT visits will reduce the proportion of beneficiaries who transition from acute and subacute LBP to chronic LBP, which may reduce costs while improving patient outcomes.

Provider requirements under this demonstration shall include the following:

- Licensed physical therapists and physical therapist assistants may provide covered physical therapy services to eligible beneficiaries under this demonstration.
- To comply with existing statutory and regulatory requirements for TRICARE, physical therapy must be prescribed by a provider listed at title 32, Code of Federal Regulations, § 199.6(c)(3)(iii)(K)(*2*).
- Physical therapy services must be performed in a demonstration state to qualify for waived cost-sharing under this demonstration.
- When appropriate, physical therapists should schedule the next appointment immediately to encourage continued use of physical therapy visits.
- Cost-sharing shall be waived for in-network physical therapists.

The following states were selected as demonstration states: Arizona, California, Colorado, Florida, Georgia, Kentucky, North Carolina, Ohio, Tennessee, and Virginia. These states were selected due to their high TRICARE retiree population (the category of beneficiaries with the highest cost-sharing for specialty care and are, therefore, the most likely to be impacted by this demonstration) and to create a comprehensive representation throughout the United States. If this demonstration is successful, the demonstration may be rolled out to the entire TRICARE population. This ensures the demonstration meets ethical standards for experiments.

If a beneficiary moves from a demonstration state to a non-demonstration state, he is no longer eligible for the demonstration. However, if a beneficiary moves from a non-demonstration state to a demonstration state, he becomes eligible for the demonstration, provided he is beginning a new PT treatment (*i.e.,* beneficiaries may not begin a PT treatment in a non-demonstration state, then receive three PT visits without cost-sharing as part of the same treatment plan after moving to a demonstration state). The goal of the demonstration is to determine if incentivizing starting PT has an impact on patient outcomes and the use of certain interventions; it is not to eliminate beneficiary burden for the entire cost of PT.

This demonstration project will be effective January 1, 2021, through December 31, 2023, unless terminated earlier by the Director, DHA, or designee. DHA may terminate the demonstration early for any reason, including significantly-higher costs than anticipated or a clear failure to achieve any of the hypothesized outcomes in the demonstration states, via subsequent **Federal Register** notice.

C. Evaluation

The primary goal of this demonstration is to incentivize the uptake of PT services. The demonstration will also test the below hypotheses using the respective outcome measures listed in Table 1:

TABLE 1—DEMONSTRATION HYPOTHESES AND OUTCOME MEASURES

Hypothesis *	Outcome measure(s)
Does waiving cost-sharing for up to three PT visits increase the initial uptake of PT visits among patients with LBP?	Total number of initial PT visits; Proportion of beneficiaries receiving an initial PT visit.
Does waiving cost-sharing for up to three PT visits increase the overall number of PT visits among patients with LBP?	Average and median number of PT visits among beneficiaries with LBP.
Does incentivizing the use of PT services reduce the number of opioids prescribed to patients with LBP?	Average and median number of opioids prescriptions filled by beneficiaries with LBP.
Does incentivizing the use of PT services reduce the amount of imaging services provided to patients with LBP?	Average and median number of imaging services (MRI, CT, X-ray, and Ultrasound) provided to beneficiaries with LBP, stratified across the following time periods and measured from initial diagnosis of LBP: 0–6 weeks; 6–12 weeks; >12 weeks.
Does incentivizing the use of PT services reduce the number of back surgeries for patients with LBP?	Proportion of beneficiaries with a diagnosis for LBP receiving back surgeries.
Does incentivizing the use of PT services reduce the total cost of care for a LBP episode?	Average and median cost of episode for LBP; Average and median cost of episode for LBP when beneficiary attends at least three PT visits; Average and median cost of episode for LBP when beneficiary attends fewer than three PT visits.
Does improved access to PT services prevent chronic LBP (*i.e.* do fewer patients transition from acute and subacute pain to chronic pain)?	Proportion of patients receiving services to treat LBP after 12 weeks from initial diagnosis of LBP.
Does incentivizing the use of PT services reduce the number of other low value services or other LBP treatments?	Average and median number of number of patients receiving injections, etc.

* The above hypotheses are intended to measure the correlational relationship; this evaluation will not make any statements on causation.

The outcome measures listed in Table 1 will be used to determine the success of the demonstration. To estimate the impact of the demonstration on the outcome measures, the evaluation of this demonstration will use a pretest-posttest non-equivalent control group methodology. For each outcome measure, the eligible population in the demonstration states (*i.e.,* the treatment group) will be compared to the eligible population in the non-demonstration states (*i.e.,* the control group) before the demonstration, annually, and at the conclusion of the demonstration. This methodology will allow DHA to estimate the impact of the demonstration (*i.e.,* the treatment effect) by subtracting the difference between the treatment and control groups at baseline from the difference between the groups at the demonstration's conclusion for each outcome measure. Baseline data will consist of one calendar year of data.

In addition to the above outcome measures, this demonstration will include a patient survey to measure reasons a patient begins and ceases PT visits, as well as access to care, quality of care, and overall health status. This information will supplement the outcome measures and will provide important context for the data analysis. For example, if patients cease PT visits because the LBP is resolved, there is evidence that incentivizing PT visits improved patient outcomes. On the other hand, if PT visits cease due to non-compliance or because PT services are not improving patients' symptoms, the demonstration was not successful in improving patient outcomes. The survey will be administered electronically to TRICARE beneficiaries with a primary diagnosis of LBP who receive PT services in demonstration states. The survey questions and collection methodology will go through the Department of Defense licensure process for approval and will require an additional **Federal Register** notice. The contractor shall provide contact information for participants to DHA, who will administer the survey, collect survey results, and evaluate survey data. The qualitative and quantitative analyses of survey results may also be used to determine the success of the demonstration. If the survey is not approved, it will not be included in the demonstration or its evaluation.

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14042 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–68]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–68 with attached Policy Justification and Sensitivity of Technology.

Dated: June 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

MAY 07 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-68 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the United Arab Emirates for defense articles and services estimated to cost $556 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 19-68

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 0 million
Other	$556 million
Total	$556 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): None

Non-MDE:

Four thousand five hundred sixty-nine (4,569) Mine Resistant Ambush Protected (MRAP) Vehicles consisting of a mix of MaxxPro Long Wheel Base (LWB), MaxxPro Recovery Vehicle (MRV), MaxxPro LWB chassis, MaxxPro Dash, MaxxPro Bases Capsule, MaxxPro MEAP Capsules, MaxxPro Plus, Caiman Multi-Terrain Vehicles without armor, Caiman Base, Caiman Plus, Caiman Capsule, and MRAP All-Terrain Vehicles (MATV), logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Army

(v) *Prior Related Cases, if any:* AE-B-IBA and AE-B-ZVA

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* May 7, 2020

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates (UAE)—Mine Resistant Ambush Protected (MRAP) Vehicles

The Government of the United Arab Emirates has requested the sale of Excess Defense Articles (EDA) of up to four thousand five hundred sixty-nine (4,569) MRAP vehicles consisting of a mix of MaxxPro Long Wheel Base (LWB), MaxxPro Recovery Vehicle (MRV), MaxxPro LWB chassis, MaxxPro Dash, MaxxPro Bases Capsule, MaxxPro MEAP Capsules, MaxxPro Plus, Caiman Multi-Terrain Vehicles without armor, Caiman Base, Caiman Plus, Caiman Capsule, and MRAP All-Terrain Vehicles (MATV), logistics support services, and other related elements of logistical and program support. The estimated total program cost is $556 million.

The proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of an important regional partner. The UAE has been, and continues to be, a vital U.S. partner for political stability and economic progress in the Middle East. This sale is consistent with U.S. initiatives to provide key allies in the region with modern systems that will enhance interoperability with U.S. forces and increase security.

The UAE intends to utilize the MRAP vehicles to increase force protection, to conduct humanitarian assistance operations, and to protect critical infrastructure. Additionally, these MRAPs will enhance the UAE's burden sharing capacity and defensive capabilities. The UAE will have no difficulty absorbing this equipment and support into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

These vehicles will be coming from U.S. Army stocks as EDA; the required EDA Congressional Notifications were made August 6, 2014. There are no known offset agreements proposed in conjunction with this proposed sale.

Implementation of this sale will not require the assignment of U.S. Government or contractor representatives to the UAE.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19–68

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Mine Resistant Ambush Protected (MRAP) vehicle is an armored, multi-purpose combat vehicle intended to support mounted urban operations to include convoy security support and dismounted patrols. It is designed to increase crew survivability. The vehicle has a blast-resistant underbody designed to protect the crew from mine blasts, fragmentation, and direct fire weapons.

2. All MRAP vehicle information needed to operate, train, and maintain the vehicles are UNCLASSIFIED. Some design and test data, design performance parameters, armoring methodology, vulnerabilities, armor types, and configuration can be classified up to SECRET.

3. Loss of this hardware, software, documentation, and/or data could permit development of information which may lead to a significant threat to future U.S. military operations. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the UAE can provide substantially the same degree of protection for this technology as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All of the defense articles and services listed in this transmittal have been authorized for release and export to the UAE.

[FR Doc. 2020–14069 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–05]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–05 with attached Policy Justification and Sensitivity of Technology.

Dated: June 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

April 30, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 20-05 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Republic of the Philippines for defense articles and services estimated to cost $1.5 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 20-05

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of the Philippines

(ii) *Total Estimated Value:*

Major Defense Equipment *	$1.0 billion
Other	$ .5 billion
Total	$1.5 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Six (6) AH-64E Apache Attack Helicopters
Eighteen (18) T700-GE-701D Engines (12 installed, 6 spares)
Fifteen (15) Honeywell Embedded Global Positioning Systems/Inertial Navigation (EGIs) w/Precise Positioning Service (PPS) (12 installed, 3 spares)
Two hundred (200) AGM-114 Hellfire Missiles
Twelve (12) M36E9 Hellfire Captive Air Training Missiles (CATM)
Three hundred (300) Advanced Precision Kill Weapon System (APKWS) Kits
One thousand seven hundred (1,700) Advanced Precision Kill Weapon System (APKWS) Guidance Sections
Six (6) AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAR-11 Modernized Pilot Night Vision Sensors (M-TADS/PNVS)
Six (6) AN/APG-78 Fire Control Radars (FCR) with Radar Electronic Units (REU)
Six (6) AN/APR-48B Modernized-Radar Frequency Interferometers (M-RFI)
Eight (8) AAR-57 Common Missile Warning Systems (CMWS) (6 installed, 2 spares)
Two hundred (200) FIM-92H Stinger Missiles
Eight (8) Manned-Unmanned Teaming-2 (MUMT-2i) Video Receivers (6 installed, 2 spares)
Eight (8) Manned-Unmanned Teaming-2 (MUMT-2i) Air-Air-Ground Kits (6 installed, 2 spares)

Non-MDE:

Also included are eight (8) AN/AVR-2B Laser Detecting sets (6 installed, 2 spares); eight (8) AN/APR-39C(V)l+ Radar Signal Detecting sets (6 installed, 2 spares); fourteen (14) Single Channel Ground and Airborne Radio Systems (SINCGARS) radios (12 installed, 2 spares); fourteen (14) UHF/VHF/LOS airborne radios (12 installed, 2 spares); eight (8) AN/APX-123A (V) Common Transponders (6 installed, 2 spares); eight (8) IDM-401 Improved Data Modems (6 new, 2 spares); eight (8) AN/ARN-149 (V)3 Automatic Direction Finders (6 installed, 2 spares); eight (8) Doppler ASN-157 Doppler Radar Velocity Sensors (6 installed, 2 spares); eight

(8) AN/APN-209 Radar Altimeters (6 installed, 2 spares); eight (8) AN/ARN-153 Tactical Air Navigation sets (TACAN) (6 installed, 2 spares); four (4) TACAN Ground Stations; eight (8) Very High Frequency Omni-Directional Range/Instrument Landing Systems (VOR/ILS) (6 installed, 2 spares); three (3) AN/PYQ-10(C) Simple Key Loader (3 new); six (6) M230El + M139 AWS Automatic Gun (6 new); eighteen (18) M261 rocket launchers (12 new, 6 spares); eighteen (18) M299 missile launchers (12 new, 6 spares); six (6) rocket motor, 2.75-inch, MK66-4, Inert (6 new); six (6) High Explosive Warhead for Airborne 2.75 Rocket, Inert (6 new); eighteen (18) Stinger air-to-air launchers (18 new); twelve (12) Stinger Captive Flight Trainers (CFT) (12 new); six (6) Stinger Aerial Handling Trainers (AHT) (6 new); five thousand (5,000) each 2.75 inch rockets (5,000 new); eighty thousand (80,000) 30mm rounds (80,000 new), training devices, communication systems, helmets, simulators, generators, transportation and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor technical assistance, technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (PI-B-VXX)

(v) *Prior Related Cases, if any*: None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 30, 2020

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Philippines—Apache AH-64E Attack Helicopters and Related Equipment and Support

The Government of the Philippines has requested to buy six (6) AH-64E Apache attack helicopters; eighteen (18) T700-GE-701D engines (12 installed, 6 spares); fifteen (15) Honeywell Embedded Global Positioning Systems/Inertial Navigation (EGIs) w/Precise Positioning Service (PPS) (12 installed, 3 spares); two hundred (200) AGM-114 Hellfire missiles; twelve (12) M36E9 Hellfire Captive Air Training Missiles (CATM); three hundred (300) Advanced Precision Kill Weapon System (APKWS) Kits; one thousand seven hundred (1,700) Advanced Precision Kill Weapon System (APKWS) Guidance Sections; six (6) AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAR-11 Modernized Pilot Night Vision Sensors (M-TADS/PNVS); six (6) AN/APG-78 Fire Control Radars (FCR) with Radar Electronic Units (REU); six (6) AN/APR-48B Modernized-Radar Frequency Interferometers (M-RFI); eight (8) AAR-57 Common Missile Warning Systems (CMWS) (6 installed, 2 spares); two hundred (200) FIM-92H Stinger missiles; eight (8) Manned-Unmanned Teaming-2 (MUMT-2i) Video Receivers (6 installed, 2 spares); and eight (8) MannedUnmanned Teaming-2 (MUMT-2i) Air-Air-Ground Kits (6 installed, 2 spares). Also included are eight (8) AN/AVR-2B Laser Detecting sets (6 installed, 2 spares); eight (8) AN/APR-39C(V)l+ Radar Signal Detecting sets (6 installed, 2 spares); fourteen (14) Single Channel Ground and Airborne Radio Systems (SINCGARS) radios (12 installed, 2 spares); fourteen (14) UHF/VHF/LOS airborne radios (12 installed, 2 spares); eight (8) AN/APX-123A (V) Common Transponders (6 installed, 2 spares); eight (8) IDM-401 Improved Data Modems (6 new, 2 spares); eight (8) AN/ARN-149 (V)3 Automatic Direction Finders (6 installed, 2 spares); eight (8) Doppler ASN-157 Doppler Radar Velocity Sensors (6 installed, 2 spares); eight (8) AN/APN-209 Radar Altimeters (6 installed, 2 spares); eight (8) AN/ARN-153 Tactical Air Navigation sets (TACAN) (6 installed, 2 spares); four (4) TACAN Ground Stations; eight (8) Very High Frequency Omni-Directional Range/Instrument Landing Systems (VOR/ILS) (6 installed, 2 spares); three (3) AN/PYQ-10(C) Simple Key Loader (3 new); six (6) M230El + M139 AWS Automatic Gun (6 new); eighteen (18) M261 rocket launchers (12 new, 6 spares); eighteen (18) M299 missile launchers (12 new, 6 spares); six (6) rocket motor, 2.75-inch, MK66-4, Inert (6 new); six (6) High Explosive Warhead for Airborne 2.75 Rocket, Inert (6 new); eighteen (18) Stinger air-to-air launchers (18 new); twelve (12) Stinger Captive Flight Trainers (CFT) (12 new); six (6) Stinger Aerial Handling Trainers (AHT) (6 new); five thousand (5,000) each 2.75 inch rockets (5,000 new); eighty thousand (80,000) 30mm rounds (80,000 new), training devices, communication systems, helmets, simulators, generators, transportation and organization equipment, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor technical assistance, technical and logistics support services, and other related elements of logistics support. The estimated cost is $1.5 billion.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a friendly country that continues to be an important force for political stability, peace, and economic progress in South-East Asia.

The Philippines is considering either the AH-64E or the AH-1Z to modernize its attack helicopter capabilities. The proposed sale will assist the Philippines in developing and maintaining strong self-defense, counterterrorism, and critical infrastructure protection capabilities. The Philippines will have no difficulty absorbing this equipment and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Boeing, Mesa, Arizona; and Lockheed Martin, Orlando, Florida. Offsets may be a requirement of doing business in the Philippines; however, offsets are negotiated directly between the Original Equipment Manufacturers or other vendors and the Government of the Philippines, and further details are not known at this time.

Implementation of this proposed sale will require 60 U.S. Government or contractor representatives to travel to Philippines for a period of 6 weeks (non concurrent). Activities will include de-processing/fielding, training, and technical/logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 20-05

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AH-64E Apache Attack Helicopter is a fielded armed attack rotary wing aircraft in the Army inventory. The AH-64E is equipped with communication and target identification equipment, navigational equipment, aircraft survivability equipment, displays and sensors. Components considered to contain sensitive technology in the proposed case are as follows:

a. The AN/ASQ-170 Modernized Target Acquisition and Designation Sight/AN/AAQ-11 Pilot Night Vision

Sensor (MTADS/PNVS) provides day, night, and limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), EI2 television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. MTADS/PNVS contain sensitive technology and are classified CONFIDENTIAL.

b. The AN/APG-78 Fire Control Radar (FCR) is an active, low-probability of intercept, millimeter-wave radar, combined with a passive AN/APR-48B Modernized Radar Frequency Interferometer (M-RFI) mounted on top of the helicopter mast. The AN/APG-78 and the AN/APR-78B M-RFI hardware components contain sensitive critical technologies. The FCR Ground Targeting Mode detects, locates, classifies and prioritizes stationary or moving armored vehicles, tanks and mobile air defense systems as well as hovering helicopters, helicopters, and fixed wing aircraft.

c. The AN/APR-48B Modernized Radar Frequency Interferometer (M-RFI) is an updated version of the passive radar detection and direction finding system. The AN/APR-78B M-RFI hardware components contain sensitive technology and are classified CONFIDENTIAL. It utilizes a detachable UDM on the M-RFI processor, which contains the Radar Frequency (RF) threat library.

d. The AGM-114R Hellfire is an air-to-ground missiles used against heavy and light armored targets, thin skinned vehicles, urban structures, bunkers, caves and personnel. The missile is Inertial Measurement Unit (IMU) based, with a variable delay fuse, improved safety and reliability. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is up to and including SECRET. Loss or compromise of classified information associated with AGM-1144R could lead to development of countermeasures or exploitation of system vulnerabilities by those obtaining the information.

e. The Hellfire M36E9 Captive Air Training Missiles (CATM) is a flight-training missile that consists of a functional guidance section coupled to an inert missile bus. The M36E9 CATM does not have a functional rocket motor or warhead, and cannot be launched. It functions like a tactical missile (without launch capability) during captive carry on the aircraft, making it suitable for training the aircrew in simulated Hellfire missile target acquisition and lock. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is SECRET.

f. The aircraft has an Embedded Global Positioning System/Inertial Navigation System (EGI) plus MultiMode Receiver (MMR), and two EGIs which use internal accelerometers, rate gyro measurements, and external sensor measurements to estimate the aircraft state, provides aircraft flight and position data to aircraft systems. The EGI is a velocity-aided, strap down, ring laser gyro based inertial unit. The EGI unit houses a GPS receiver. Integrated within the EGI is an Inertial Measurement Unit (IMU) for processing functions. Each EGI also houses an MMR to provide for reception of ground based NAVAID signals for instrument aided flight.

g. The AAR-57 Common Missile Warning System (CMWS) detects energy emitted by threat missiles in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate countermeasures. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD). The ECU hardware is classified CONFIDENTIAL; releasable technical manuals for operation and maintenance are classified SECRET.

h. The AN/APR-39 Radar Signal Detecting Set is a system that provides warnings of radar-directed air defense threats and allows appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified CONFIDENTIAL when programmed with threat data; releasable technical manuals for operation and maintenance are classified CONFIDENTIAL; releasable technical data (technical performance) is classified SECRET. The system can be programmed with threat data provided by the purchasing country.

i. The M36E9 Captive Air Training Missile (CATM) is a Hellfire training missile (Non-NATO) that consists of a functional guidance section coupled to an inert missile bus. The missile has an operational semi-active laser seeker that can search for and lock-on to laser designated targets for pilot training, but it does not have a warhead or propulsion section and cannot be launched.

j. The Stinger RMP Block I Missile, hardware, embedded software object code and operating documentation contain sensitive technology and are classified CONFIDENTIAL. The highest classification of the Stinger 92H Reprogrammable Micro-Processor (RMP) Block I missile hardware is CONFIDENTIAL, and the highest classification of data and information is SECRET. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified CONFIDENTIAL. Missile System hardware components contain sensitive critical technologies. Stinger Block I critical technology is primarily in the area of design and production know-how and not end-items. Information on countermeasures vulnerability to electronic countermeasures, system performance capabilities and effectiveness, simulation and test data and software source code are classified up to SECRET.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Republic of the Philippines can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to the Republic of the Philippines.

[FR Doc. 2020–14067 Filed 6–29–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0106]

Agency Information Collection Activities; Comment Request; G5 System Post Award Budget Drawdown E-Form

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension to an existing information collection request.

DATES: Interested persons are invited to submit comments on or before August 31, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0106. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Supervisory Management Analyst of Strategic Collections and Clearance, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, 202–453–6136.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: G5 System Post Award Budget Drawdown e-Form.

OMB Control Number: 1855–0028.

Type of Review: Extension of an existing information collection request.

Respondents/Affected Public: Private Sector; State, Local or Tribal Organizations.

Total Estimated Number of Annual Responses: 30,496.

Total Estimated Number of Annual Burden Hours: 30,496.

Abstract: In response to grant monitors need for a better reporting mechanism for grantee budgets, the G5 team developed an electronic budget form for grantees to complete. This electronic form requires grantees to detail the budget categories from which they are expending funds for Department grant monitors to track more carefully the drawdowns and financial management systems of grantees. Although this form may be used by all grantees, at this time only grantees on cost reimbursement or route payment status will be required to use this form when reporting their budget, requesting funds, and accessing funds.

Dated: June 25, 2020.

Kate Mullan,

PRA Coordinator Strategic Collections and Clearance Office of the Chief Data Officer Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14041 Filed 6–29–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–197–000.
Applicants: Deuel Harvest Wind Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Deuel Harvest Wind Energy LLC.
Filed Date: 6/24/20.
Accession Number: 20200624–5035.
Comments Due: 5 p.m. ET 7/15/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2144–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: Letter Agreement IP Oberon, LLC SA No. 248, TOT910 to be effective 6/25/2020.
Filed Date: 6/24/20.
Accession Number: 20200624–5005.
Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2145–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: ISO–NE and NEPOOL; Revisions to Tariff Related to FAP Enhancements to be effective 9/10/2020.
Filed Date: 6/24/20.
Accession Number: 20200624–5025.
Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2146–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2020–06–24_SA 2884 OTP-Crowned Ridge 3rd Rev GIA (G736 J442) to be effective 6/10/2020.
Filed Date: 6/24/20.
Accession Number: 20200624–5032.
Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2147–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Section 205(d) Rate Filing: Rate Schedule FERC No. 283 between Tri-State and Continental to be effective 6/25/2020.
Filed Date: 6/24/20.
Accession Number: 20200624–5034.
Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2148–000.
Applicants: Lexington Chenoa Wind Farm LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 8/23/2020.
Filed Date: 6/24/20.
Accession Number: 20200624–5048.
Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2149–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original WMPA, Service Agreement No. 5666; Queue No. AF1–033 to be effective 5/28/2020.
Filed Date: 6/24/20.
Accession Number: 20200624–5054.
Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2150–000.
Applicants: Alcoa Power Generating Inc.
Description: Section 205(d) Rate Filing: Fourth Supplemental Transmission Services Agreement to be effective 7/1/2020.
Filed Date: 6/24/20.
Accession Number: 20200624–5138.
Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2151–000.
Applicants: Morris Cogeneration, LLC.
Description: Compliance filing: Morris Cogeneration, LLC Revised MBR Tariff Filing to be effective 6/25/2020.

Filed Date: 6/24/20.

Accession Number: 20200624–5151.

Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2152–000.

Applicants: EF Kenilworth LLC.

Description: Compliance filing: EF Kenilworth LLC Revised MBR Tariff Filing to be effective 6/25/2020.

Filed Date: 6/24/20.

Accession Number: 20200624–5154.

Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2153–000.

Applicants: Sanford Airport Solar, LLC.

Description: Baseline eTariff Filing: Sanford Airport Solar, LLC Application for MBR Authority to be effective 8/24/2020.

Filed Date: 6/24/20.

Accession Number: 20200624–5155.

Comments Due: 5 p.m. ET 7/15/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–45–000.

Applicants: Indianapolis Power & Light Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Indianapolis Power & Light Company.

Filed Date: 6/24/20.

Accession Number: 20200624–5108.

Comments Due: 5 p.m. ET 6/29/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 24, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14034 Filed 6–29–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10010–72–ORD]

Human Studies Review Board; Notification of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development announces two separate public meetings of the Human Studies Review Board (HSRB) to advise the Agency on the ethical and scientific review of research involving human subjects.

DATES: A two-day virtual public meeting will be held on Tuesday, July 21, 2020 and Wednesday, July 22, 2020, both from 1:00 p.m. to approximately 5:30 p.m. Eastern Time. A separate, subsequent teleconference meeting is planned for Thursday, September 17, 2020, from 2:00 p.m. to approximately 3:30 p.m. Eastern Time for the HSRB to finalize its Report of the July 21 and 22, 2020 meeting.

ADDRESSES: All of these meetings will be conducted entirely virtually and by telephone. For detailed access information visit the HSRB website: *https://www.epa.gov/osa/human-studies-review-board.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact the HSRB Designated Federal Official (DFO), Thomas O'Farrell at the following telephone number: (202) 564–8451 or by email address at: *ofarrell.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION:

Meeting access: These meetings will be open to the public. The full agenda with access information and meeting materials will be available at the HSRB website: *https://www.epa.gov/osa/human-studies-review-board.* For questions on document availability, or if you do not have access to the internet, consult with the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations. For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

How may I participate in this meeting?

The HSRB encourages the public's input. You may participate in these meetings by following the instructions in this section.

1. Oral comments. To pre-register to make oral comments, please contact the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**. Requests to present oral comments during the meeting will be accepted up to Noon Eastern Time on Tuesday, July 14, 2020, for the July 21 and 22, 2020 meeting and up to Noon Eastern Time on Thursday, September 10, 2020 for the September 17, 2020 meeting. To the extent that time permits, interested persons who have not pre-registered may be permitted by the HSRB Chair to present oral comments during either meeting at the designated time on the agenda. Oral comments before the HSRB are generally limited to five minutes per individual or organization. If additional time is available, further public comments may be possible.

2. Written comments. Submit your written comments prior to the meetings. For the Board to have the best opportunity to review and consider your comments as it deliberates, you should submit your comments via email by Noon Eastern Time on Tuesday, July 14, 2020, for the July 21 and 22, 2020 meeting and by Noon Eastern Time on Thursday, September 10, 2020 for the September 17, 2020 meeting. If you submit comments after these dates, those comments will be provided to the HSRB members, but you should recognize that the HSRB members may not have adequate time to consider your comments prior to their discussion. You should submit your comments to the DFO, Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App. 2, section 9. The HSRB provides advice, information, and recommendations on issues related to scientific and ethical aspects of third-party human subjects research that are submitted to the Office of Pesticide Programs (OPP) to be used for regulatory purposes.

Topic for discussion. On July 21, 2020, the HSRB will review a completed study from Citrefine International Limited titled ''A single group trial to determine the complete protection time of an insect repellent formulation containing 30% Citridiol® (Oil of Lemon Eucalyptus) against three species of ticks''. On July 22, 2020, the HSRB will review a protocol from the Antimicrobial Exposure Assessment Task Force II titled ''A Study for Measurement of Potential Dermal and Inhalation Exposure During Pressurized Hand-Wand Spraying of Antimicrobial Products''. The agenda and meeting materials for this topic will be seven calendar days available in advance of the meeting at *https://www.epa.gov/osa/human-studies-review-board.*

On September 17, 2020, the HSRB will review and finalize their draft Final Report from the July 21 and 22, 2020 meeting. The agenda and the draft report will be available seven calendar days prior to the meeting at *https://www.epa.gov/osa/human-studies-review-board.*

Meeting minutes and final reports. Minutes of these meetings, summarizing the topics discussed and recommendations made by the HSRB, will be released within 90 calendar days of each meeting. These minutes will be available at *https://www.epa.gov/osa/human-studies-review-board.* In addition, information regarding the HSRB's Final Report, will be found at *https://www.epa.gov/osa/human-studies-review-board* or can be requested from Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**.

Jennifer Orme-Zavaleta,

EPA Science Advisor.

[FR Doc. 2020–14054 Filed 6–29–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF MANAGEMENT OF BUDGET

DEPARTMENT OF THE TREASURY

[FRL–10011–02–OW]

Water Infrastructure Finance and Innovation Act Program (WIFIA) Criteria Pursuant to the Further Consolidated Appropriations Act, 2020

AGENCY: Environmental Protection Agency (EPA), Office of Management and Budget (OMB), and Department of the Treasury (Treasury).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA), the Office of Management and Budget (OMB), and the Department of the Treasury (Treasury) are providing potential applicants to the Water Infrastructure Finance and Innovation Act (WIFIA) Program with information about budgetary screening criteria that will be applied to projects in accordance with the Further Consolidated Appropriations Act, 2020.

DATES: The effective date of the contents of this notice is June 30, 2020.

FOR FURTHER INFORMATION CONTACT: For additional EPA information related to this notice, please contact Jordan Dorfman, Office of Water (mail code 4202M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–0614; or email: *Dorfman.Jordan@epa.gov* (preferred). For additional OMB information related to this notice, please contact Andrea Grossman, Environment Branch, Office of Management and Budget, 757 17th Street NW, Washington, DC 20006; telephone number: (202) 395–4756; or email: *AGrossman@omb.eop.gov.* For additional Treasury information related to this notice, please contact Colleen Mills, Office of Federal Program Finance, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone number: (202) 622–5447; or email: *Colleen.Mills@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Requirement

The following criteria are published pursuant to the Water Infrastructure Finance and Innovation Program Account (WIFIA Program) heading in the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94). Proviso 4 under the WIFIA Program heading requires the publication of criteria that ''limit Federal participation in a project consistent with the requirements for the budgetary treatment provided for in section 504 of the Federal Credit Reform Act of 1990 [(FCRA; 2 U.S.C. 661c)] and based on the recommendations contained in the 1967 Report of the President's Commission on Budget Concepts [(1967 Report)].'' Proviso 7 under the WIFIA Program heading requires ''the use of direct loans or loan guarantee authority under [the WIFIA Program] heading for direct loans or commitments to guarantee loans for any project shall be in accordance with the criteria published pursuant to this Act.''

II. Background

The Federal budget is presented on a cash basis. This is driven by many considerations, among which is a need to reflect the statutory requirement that the Federal Government records full cost at the time an obligation is entered into, as required by 31 U.S.C. 1501, known as the recording statute. If an activity is determined to be Federal in nature, then, consistent with 31 U.S.C. 1501, Federal obligations are recorded in the budget at the full value of the activity. The question of whether or not to include a project or asset in the budget hinges on whether the project or asset in question is Federal or non-Federal in nature. When faced with a project or asset where this Federal designation is unclear, the 1967 Report recommends ''a comprehensive budget, with very few exclusions'' and states that ''borderline agencies and transactions should be included in the budget unless there are exceptionally persuasive reasons for exclusion.'' [1] The 1967 Report notes the inherent difficulty in making a Federal or non-Federal determination in many cases and suggests a series of questions, which guide the criteria below, yet notes that ''the answer to no one of these questions is conclusive'' and decisions involve ''a net weighing of as many relevant considerations as possible.'' [2]

The most significant statutory exception to the cash basis of the Federal budget is section 504 of FCRA, 2 U.S.C. 661c, which requires the budgetary treatment of direct loans and loan guarantees provided by the Government to a non-Federal borrower to be recorded using net present value. Regardless of the identity of the borrower, however, requiring that a Federal project or asset be recorded in the budget on a net present value basis would be inconsistent with 31 U.S.C. 1501, existing Government-wide guidance, and a cash budget. Therefore, to ''limit Federal participation in a project consistent with the requirements for the budgetary treatment provided for in section 504 of [FCRA] and based on the recommendations contained in the [1967 Report],'' as required by Proviso 4 under the WIFIA Program heading in Public Law 116–94, only non-Federal projects are eligible for WIFIA loans and loan guarantees.

III. Federal Asset Screening Criteria and Process

The following criteria are published pursuant to Proviso 4 under the WIFIA Program heading in Public Law 116–94 and apply only to loans and loan guarantees issued under the Water Infrastructure Finance and Innovation Act of 2014 (Public Law 113–121, title

[1] *The 1967 Report of the President's Commission on Budget Concepts,* pg. 25.

[2] *Id.*

V, subtitle C (33 U.S.C. Chapter 52)). The criteria and procedures identified in this notice do not apply to any Notices of Funding Availability (NOFA) published by the WIFIA Program prior to the publication of this notice. In order to comply with Proviso 7 under the WIFIA heading in Public Law 116–94, a proposed WIFIA-financed activity will be evaluated using the two initial screening questions and the sixteen criteria listed below as a guide. The criteria will be considered cumulatively and individually when evaluating project eligibility. In addition to the criteria listed below, the U.S. Environmental Protection Agency (EPA) and the Office of Management and Budget (OMB) will consider any additional information that may bear on the Federal Government's current and future expected involvement in a WIFIA project. Finally, as required by the Proviso 10 of Public Law 116–94, none of the direct loans or loan guarantee authority made available under Public Law 116–94 shall be available for any project unless the Administrator and the Director of OMB have certified in advance in writing that the direct loan or loan guarantee, as applicable, and the project comply with the criteria developed and published pursuant to Public Law 116–94.

EPA will continue to implement existing elements of the WIFIA program consistent with prior practice, supplemented by the criteria and procedures provided in this notice. EPA will publish a NOFA that will include the Administrator's targeted priorities for each new round of WIFIA financing and will invite prospective borrowers to submit letters of interest to EPA. EPA will review those letters for statutory eligibility and, in coordination with OMB, apply the screening criteria and procedures provided in the NOFA and this notice to determine funding eligibility before formally inviting prospective applicants to apply for WIFIA funding.

Prospective projects will be evaluated by EPA based on the selection process articulated in each NOFA. EPA will then engage with OMB to review how the criteria in this notice were applied to the potential projects. EPA and OMB must reach preliminary agreement that each of the projects is non-Federal before EPA formally invites such projects to apply for WIFIA financing.

EPA will also inform OMB of any new information or changes to this preliminary assessment of the screening questions and criteria listed below for individual projects that are progressing through the full WIFIA evaluation process following receipt of complete project financing applications, and will terminate the process if projects are determined not to comply with FCRA based on that new information.

EPA and OMB encourage prospective WIFIA Program borrowers to evaluate the screening questions and criteria in this notice and provide sufficient information in letters of interest and formal applications that address any federal asset questions or concerns, including the type of project seeking WIFIA funding under 33 U.S.C. 3907(b) and whether or not the loan will satisfy EPA's template term sheet and standard loan agreement provisions.

IV. Initial Federal Asset Screening Questions

A. Is the project, in whole or in part, a project currently authorized by Congress for the Army Corps of Engineers or Bureau of Reclamation to construct? [3]

B. Is the project, in whole or in part, a local cost share requirement for an Army Corps of Engineers or Bureau of Reclamation project? [4]

V. Federal Asset Screening Criteria

Structure of the Project

1. To what degree does the Federal Government comprise the WIFIA project's user base?
2. Does the project involve the use of the Federal Government's sovereign power (excluding, *e.g.,* National Environmental Policy Act (NEPA) review)?
3. Does the WIFIA project require the construction or acquisition of an asset for the special purpose of or use by the Federal Government?
4. To what degree does the Federal Government direct the contracting process for the WIFIA project?
5. Is there a specific authority provided to the WIFIA project by an Act of Congress without which the WIFIA project could not proceed?
6. What is the Federal Government's role in the governance of the project? In other words, what is the role of the Federal Government in selecting management or overseeing the project (including, but not limited to, approval of contract scope and step-in rights, or as a member of a board of directors), both during construction as well as in terms of operations and ongoing maintenance?
7. Is this project part of a larger Federally authorized project (not limited to but consistent with the initial screening criteria) and if so, does the project under consideration for a loan or loan guarantee constitute a useful segment—either a planning segment or a useful asset—as defined in the Capital Programming Guide (supplement to OMB Circular A–11)?

Financing of the Project

8. Does the Federal Government provide resources for the WIFIA Federal loan repayment?
9. Will the WIFIA project meet the nonsubordination requirement provided in 33 U.S.C. 3908(b)(6)?
10. Does the WIFIA project depend on the Federal Government making other in-kind contributions (land, real estate, right-of-way, etc.)?
11. Is non-Federal financing available for the project?
12. If the project is required to obtain an investment-grade rating opinion letter, per 33 U.S.C. 3901(4) and 3908(a)(3), to what extent does the rating opinion letter consider Federal support as a credit enhancement?

Project Liabilities

13. To what degree will the Federal Government bear funding liabilities associated with the WIFIA project not otherwise appropriated by Congress or captured in the loan subsidy?
14. Is the risk to the Federal Government low relative to the private sector for the financing of the WIFIA project?
15. To what degree does the Federal Government own or is the Federal Government contractually obligated to complete, maintain, or repair damage to the WIFIA project?
16. Is the Federal Government liable for unforeseen costs (*e.g.,* environmental impacts, damage from natural disasters, or cost overruns) either before, during,

[3] A project authorized by an Act of Congress to be built by the Army Corps of Engineers or Bureau of Reclamation is ineligible for WIFIA financing. However, a project that may connect to, or be tangentially related to, such a project, may be eligible depending on the factual circumstances (*e.g.,* a project to upgrade a water distribution system that is connected to an Army Corps of Engineers- or Bureau of Reclamation-constructed water source may be eligible for WIFIA financing in some circumstances). Furthermore, a project at a local municipal facility might not be deemed ineligible simply because it was originally built by the Army Corps of Engineers or Bureau of Reclamation. Such questions will need to be resolved on a case-by-case basis.

[4] WIFIA authorizes loans to support local cost-sharing requirements. *See* 33 U.S.C. 3908(b)(8) (''The proceeds of a secured loan under this section may be used to pay any non-Federal share of project costs required if the loan is repayable from non-Federal funds.''). However, such a loan that would finance a project that is in whole, or in part, a project authorized by Congress for the Army Corps of Engineers or the Bureau of Reclamation to construct would not meet the Federal asset screening process. Project applicants are encouraged to review all applicable statutory requirements before seeking WIFIA financing.

or after completion of the WIFIA project?

VI. Certification

The Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) requires that the Administrator of EPA, the Secretary of the Treasury, and the Director of OMB certify that criteria developed for project eligibility for direct loans and loan guarantees authorized by the Water Infrastructure Finance and Innovation Act of 2014 are compliant with the first paragraph found under the ''Water Infrastructure Financing and Innovation Program Account'' heading in the Further Consolidated Appropriations Act, 2020. The Administrator, the Secretary, and the Director certify that the criteria developed meet the aforementioned requirement.

Andrew Wheeler,

Administrator, Environmental Protection Agency.

Russell Vought,

Acting Director, Office of Management and Budget.

Steven Mnuchin,

Secretary, Department of the Treasury.

[FR Doc. 2020–13889 Filed 6–26–20; 4:15 pm]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1243; FRS 16847]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before August 31, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1243.

Title: Sections 1.9020(n), 1.9030(m), 1.9035(o), Community notification requirement for certain contraband interdiction systems; Section 20.18(r), Contraband Interdiction System (CIS) requirement; Section 20.23(a), good faith negotiations.

Form Number: N/A.

Respondents: Businesses or other for-profit entities and state, local or Tribal Governments.

Type of Review: Extension of a currently approved collection.

Number of Respondents and Responses: 26 respondents and 28 responses.

Estimated Time per Response: 8–16 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: There is no obligation to respond; response required to obtain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

Total Annual Burden: 325 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act: No impact(s).

Needs and Uses: On March 24, 2017, the Federal Communications Commission released a Report and Order, Promoting Technological Solutions to Combat Contraband Wireless Devices in Correctional Facilities, GN Docket No. 13–111, FCC 17–25 (Report and Order), in which the Commission took important steps to help law enforcement combat the serious threats posed by the illegal use of contraband wireless devices by inmates. Across the country, inmates have used contraband devices to order hits, run drug operations, operate phone scams, and otherwise engage in criminal activity that endangers prison employees, other inmates, and innocent members of the public. In the Report and Order, the Commission streamlined the process of deploying contraband wireless device interdiction systems—systems that use radio communications signals requiring Commission authorization—in correctional facilities. The action will reduce the cost of deploying solutions and ensure that they can be deployed more quickly and efficiently. In particular, the Commission waived certain filing requirements and provided for immediate approval of the spectrum lease applications needed to operate these systems.

The effectiveness of Contraband Interdiction System (CIS) deployment requires all carriers in the relevant area of the correctional facility to execute a spectrum lease with the CIS provider. Even if the major Commercial Mobile Radio Services (CMRS) licensees negotiate expeditiously and in good faith, if one CMRS licensee in the area fails to engage in lease negotiations in a reasonable time frame or at all, the CIS solution will not be effective. The lack of cooperation of even a single wireless provider in a geographic area of a correctional facility can result in deployment of a system with insufficient spectral coverage, subject to abuse by inmates in possession of contraband wireless devices operating on frequencies not covered by a spectrum lease agreement. While some carriers have been cooperative, it is imperative that all CMRS licensees be required to engage in lease negotiations in good faith and in a timely fashion. Therefore, the Commission adopted a rule requiring that CMRS licensees negotiate in good faith with entities seeking to deploy a CIS in a correctional facility. If, after a 45 day period, there is no agreement, CIS providers seeking Special Temporary Authority (STA) to operate in the absence of CMRS licensee consent may file a request for STA with the Wireless Telecommunications Bureau (WTB), with a copy served at the same time on the CMRS licensee, accompanied by evidence demonstrating its good faith, and the unreasonableness of the CMRS licensee's actions, in negotiating an agreement. The CMRS licensee may then file a response with WTB, with a copy served on the CIS provider at that time, within 10 days of the filing of the STA request.

The supplementary information provided along with the STA application by the CIS provider will be used by WTB to determine whether the CIS provider has negotiated in good faith, yet the CMRS licensee has not negotiated in good faith. The CMRS licensee may use the evidence accompanying the STA application to craft a response. WTB will analyze the evidence from the CIS providers and the CMRS licensee's response to determine whether to issue STA to the entity seeking to deploy the CIS.

The Commission explored whether it should impose a requirement that the community in the vicinity of a correctional facility where a CIS is installed be notified of the installation. The Commission explained that a goal of the proceeding is to expedite the deployment of technological solutions to combat the use of contraband wireless devices, not to impose unnecessary barriers to CIS deployment. Consistent with that goal, the Commission found that a flexible and community-tailored notification requirement for certain CISs outweighed the minimal burden of notification and furthered the public interest. After careful consideration of the record, the Commission imposed a rule that, 10 days prior to deploying a CIS that prevents communications to or from mobile devices, a lessee must notify the community in which the correctional facility is located, and the Commission amended its spectrum leasing rules to reflect this requirement. The Commission agreed with commenters that support notification of the surrounding community due to the potential for accidental call blocking and the public safety issues involved. The information provided in the notification will put the houses and businesses in the surrounding community on notice that a CIS will be deployed in the vicinity that has the potential for accidental call blocking.

Acknowledging the importance of ensuring the availability of emergency 911 calls from correctional facilities, and the fact that delivering emergency calls to public safety answering points (PSAPs) facilitates public safety services and generally serves the public interest, the Commission amended its rules to require that CIS providers regulated as private mobile radio service (PMRS) must route all 911 calls to the local PSAP. That said, the Commission also acknowledged the important role state and local public safety officials play in the administration of the 911 system. Accordingly, although the CIS provider is required to pass through emergency 911 calls, the PSAPs can inform the CIS provider that they do not want to receive calls from a given correctional facility. By allowing the PSAPs to decline the emergency 911 calls, the Commission recognized the reported increased volume of PSAP harassment through repeated inmate fraudulent 911 calls. The information provided by the PSAP or emergency authority will result in the CIS provider not passing through E911 calls from a particular correctional facility.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–14026 Filed 6–29–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16896]

SES Performance Review Board

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, Chairman Ajit Pai has appointed the following executives to the Senior Executive Service (SES) Performance Review Board (PRB): Lisa Fowlkes.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–14079 Filed 6–29–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings; Notice of a Change in Time of Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: The previously announced meeting schedule of the Board of Directors, published at 85 FR 37658, has changed.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, June 25, 2020, at 2:30 p.m.

CHANGES IN THE MEETING: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the previously announced meeting of the Board of Directors scheduled to be held on Thursday, June 25, 2020, at 2:30 p.m. (open session) has been *RESCHEDULED* for 10:00 a.m. that same day.

No earlier notice of the change in time of this meeting was practicable.

As previously announced, out of an abundance of caution related to current and potential coronavirus developments, the public's means to observe this Board meeting will be via a Webcast live on the internet and subsequently made available on-demand approximately one week after the event. Visit *http://fdic.windrosemedia.com* to view the live event. Visit *http://fdic.windrosemedia.com/index.php?category=FDIC+Board+Meetings* after the meeting. If you need any technical assistance, please visit our Video Help page at: *https://www.fdic.gov/video.html.*

CONTACT PERSON FOR MORE INFORMATION: Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: June 25, 2020.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2020–14110 Filed 6–26–20; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 30, 2020.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *Jiko Group, Inc., Berkeley, California;* to become a bank holding company, by acquiring voting shares of Mid-Central Federal Savings Bank, Wadena, Minnesota, upon Mid-Central's conversion from a federal savings to a national bank. In connection with this application, Jiko Group, Inc., through its wholly-owned subsidiary, Jiko Securities, Inc., Berkeley, California, to engage de novo in agency transactional services for customers and investment transactions as principal, pursuant to sections 225.28(b)(7) and (b)(8), respectively, of Regulation Y. In addition, Jiko Group Inc., through its wholly-owned subsidiary, Jiko Technologies, Inc., Berkeley, California, and its wholly-owned subsidiary, Jiko Technologies Europe ehf, Reykjavik, Iceland, to engage de novo in data processing pursuant to section 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, June 25, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–14066 Filed 6–29–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 30, 2020.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Crossroads Systems, Inc., Dallas, Texas;* to become a bank holding company by acquiring the voting shares of Rice Bancshares, Inc., and thereby indirectly acquire The First State Bank, both of Rice, Texas.

Board of Governors of the Federal Reserve System, June 25, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–14065 Filed 6–29–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1518]

Development of Anti-Infective Drug Products for the Pediatric Population; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Development of Anti-Infective Drug Products for the Pediatric Population.'' The purpose of this guidance is to provide general recommendations on the development of anti-infective drug products for pediatric patients. The guidance addresses initiation of pediatric clinical studies, enrollment strategies, extrapolation of efficacy, and other considerations to help facilitate pediatric anti-infective drug product development.

DATES: Submit either electronic or written comments on the draft guidance by August 31, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1518 for ''Development of Anti-Infective Drug Products for the Pediatric Population.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Hiwot Hiruy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6395, Silver Spring, MD 20993–0002, 240–402–0872; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Development of Anti-Infective Drug Products for the Pediatric Population.'' The purpose of this guidance is to provide general recommendations on the development of anti-infective drug products for pediatric patients. The guidance addresses initiation of pediatric clinical trials, enrollment strategies, extrapolation of efficacy, and other considerations to help facilitate pediatric anti-infective drug development.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Development of Anti-Infective Drug Products for the Pediatric Population.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 50, 312, and 314, and in 21 CFR 201.56 and 201.57 have been approved under OMB control numbers 0910–0755, 0910–0014, 0910–0001, and 0910–0572, respectively.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: June 25, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14085 Filed 6–29–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Data System for Organ Procurement and Transplantation Network, OMB No. 0915–0157—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than July 30, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Data System for Organ Procurement and Transplantation Network OMB No. 0915–0157—Extension.

Abstract: Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). This is a request for an extension of the current OPTN data collection forms associated with an individual's clinical characteristics at the time of registration, transplant, and follow-up after the transplant. This extension will apply to all forms collecting donor (living and deceased) data at the time of transplant as well. These specific data elements of the OPTN data system are collected from transplant hospitals, organ procurement organizations, and histocompatibility laboratories. The information is used to indicate the disease severity of transplant candidates, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country.

A 60-day notice published in the **Federal Register** on January 3, 2020, vol. 85, No. 2; pp. 324–325. HRSA received one comment. The commenter encouraged HRSA to carefully weigh potential cost implications and work burden against added value when considering future additions or changes to data collection requirements. The commenter suggested that HRSA encourage the use of automated data collection techniques to minimize the information collection burden. The OPTN contract that went into effect in April 2019 includes new tasks to require the OPTN Contractor to: (1) Develop and implement a plan to collect official OPTN data through direct electronic data submission and (2) supplement official OPTN data collected by the Contractor with information from external data sources to reduce the burden on OPTN members. HRSA appreciates all feedback, and we will continue to review and evaluate all data collection efforts going forward in consultation with the OPTN.

Need and Proposed Use of the Information: Data are used to develop transplant, donation, and allocation policies, to determine whether institutional members are complying with policy, to determine member-specific performance, to ensure patient safety, and to fulfill the requirements of the OPTN Final Rule. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and members of the public for evaluation, research, patient information, and other important purposes.

On May 31, 2019, OMB approved changes to four forms via the change memo process. The first change added a field to the Deceased Donor Registration form to allow OPOs that perform donor serology testing for Strongyloides to report the results. The second change modified a section of three forms that collect data on the health of lung transplant recipients post-transplant. The change allows for data to be collected on Chronic Lung Allograft Dysfunction, which is a broader, more contemporary definition of post-transplant lung dysfunction. Other fields pertaining to outdated measures of graft function were removed. The modifications were made to these three forms: Heart/Lung Transplant Recipient Follow-up 6 month form; Heart/Lung Transplant Recipient Follow-up 1–5 year form; and Heart/Lung Transplant Recipient Follow-up Post 5 year form.

Likely Respondents: Transplant programs, Organ Procurement Organizations, and Histocompatibility Laboratories.

Burden Statement: Burden, in this context, means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent *	Total responses **	Average burden per response (in hours)	Total burden hours
Deceased Donor Registration	58	185.0	10,731	1.1	11,804.1
Living Donor Registration	300	22.9	6,855	1.8	12,339.0
Living Donor Follow-up	300	62.2	18,669	1.3	24,269.7
Donor Histocompatibility	147	124.0	18,226	0.2	3,645.2
Recipient Histocompatibility	147	225.1	33,090	0.4	13,236.0
Heart Candidate Registration	140	33.7	4,717	0.9	4,245.3

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents	Number of responses per respondent *	Total responses **	Average burden per response (in hours)	Total burden hours
Heart Recipient Registration	140	24.3	3,406	1.2	4,087.2
Heart Follow Up (6 Month)	140	22.0	3,082	0.4	1,232.8
Heart Follow Up (1–5 Year)	140	90.6	12,686	0.9	11,417.4
Heart Follow Up (Post 5 Year)	140	154.0	21,556	0.5	10,778.0
Heart Post-Transplant Malignancy Form	140	12.8	1,788	0.9	1,609.2
Lung Candidate Registration	71	45.2	3,210	0.9	2,889.0
Lung Recipient Registration	71	35.7	2,532	1.2	3,038.4
Lung Follow Up (6 Month)	71	32.4	2,297	0.5	1,148.5
Lung Follow Up (1–5 Year)	71	118.8	8,438	1.1	9,281.8
Lung Follow Up (Post 5 Year)	71	116.5	8,271	0.6	4,962.6
Lung Post-Transplant Malignancy Form	71	19.7	1,400	0.4	560.0
Heart/Lung Candidate Registration	69	1.0	67	1.1	73.7
Heart/Lung Recipient Registration	69	0.5	32	1.3	41.6
Heart/Lung Follow Up (6 Month)	69	0.4	31	0.8	24.8
Heart/Lung Follow Up (1–5 Year)	69	1.1	79	1.1	86.9
Heart/Lung Follow Up (Post 5 Year)	69	3.3	228	0.6	136.8
Heart/Lung Post-Transplant Malignancy Form	69	0.3	21	0.4	8.4
Liver Candidate Registration	146	90.3	13,183	0.8	10,546.4
Liver Recipient Registration	146	56.5	8,256	1.2	9,907.2
Liver Follow-up (6 Month–5 Year)	146	266.6	38,919	1.0	38,919.0
Liver Follow-up (Post 5 Year)	146	316.6	46,225	0.5	23,112.5
Liver Recipient Explant Pathology Form	146	10.6	1,544	0.6	926.4
Liver Post-Transplant Malignancy	146	16.3	2,387	0.8	1,909.6
Intestine Candidate Registration	20	7.0	139	1.3	180.7
Intestine Recipient Registration	20	5.2	104	1.8	187.2
Intestine Follow Up (6 Month–5 Year)	20	26.2	524	1.5	786.0
Intestine Follow Up (Post 5 Year)	20	37.2	744	0.4	297.6
Intestine Post-Transplant Malignancy Form	20	2.1	42	1.0	42.0
Kidney Candidate Registration	237	168.8	39,998	0.8	31,998.4
Kidney Recipient Registration	237	89.4	21,195	1.2	25,434.0
Kidney Follow-Up (6 Month–5 Year)	237	431.9	102,350	0.9	92,115.0
Kidney Follow-up (Post 5 Year)	237	449.4	106,507	0.5	53,253.5
Kidney Post-Transplant Malignancy Form	237	22.6	5,365	0.8	4,292.0
Pancreas Candidate Registration	133	2.8	368	0.6	220.8
Pancreas Recipient Registration	133	1.5	194	1.2	232.8
Pancreas Follow-up (6 Month–5 Year)	133	7.9	1,047	0.5	523.5
Pancreas Follow-up (Post 5 Year)	133	15.9	2,119	0.5	1,059.5
Pancreas Post-Transplant Malignancy Form	133	0.7	97	0.6	58.2
Kidney/Pancreas Candidate Registration	133	9.8	1,297	0.6	778.2
Kidney/Pancreas Recipient Registration	133	7.7	1,028	1.2	1,233.6
Kidney/Pancreas Follow-up (6 Month–5 Year)	133	32.8	4,363	0.5	2,181.5
Kidney/Pancreas Follow-up (Post 5 Year)	133	57.8	7,688	0.6	4,612.8
Kidney/Pancreas Post-Transplant Malignancy Form	133	2.2	292	0.4	116.8
VCA Candidate Registration	27	0.9	24	0.4	9.6
VCA Recipient Registration	27	1.6	43	1.3	55.9
VCA Recipient Follow Up	27	0.7	18	1.0	18.0
Total	6,204	....	567,472	....	425,925.1

* The Number of Responses per Respondent was calculated by dividing the Total Responses by the Number of Respondents and rounding to the nearest tenth.
** Numbers based on 2018 forms.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–14046 Filed 6–29–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

Date: July 29, 2020.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 25, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14059 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–20–003 Real-Time Chromatin Dynamics and Function.

Date: July 9, 2020.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, (301) 451–3388. *seldens@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognitive, Behavioral and Neuroimaging Signatures in Neurological Disorders.

Date: July 23, 2020.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Mechanisms of Disparities in Lung Cancer.

Date: July 23, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, MSC 7770, Bethesda, MD 20892, (301) 435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Emotions, Sleep, Stress, Health, and Psychopathology.

Date: July 23, 2020.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Katherine Colona Morasch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–9147 *moraschkc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Immunology.

Date: July 24, 2020.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *dwinter@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14020 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 20, 2020, 11:00 a.m. to July 20, 2020, 04:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 23, 2020, 85 FR 37684.

This notice is being amended to change the meeting time from 11:00 a.m. to 4:00 p.m. to 12:15 p.m. to 5:00 p.m. The meeting is closed to the public.

Dated: June 24, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14021 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

The meeting will be held virtually and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: July 17, 2020.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: Discussion of Patient Safety and Clinical Quality, Activities Regarding Novel Coronavirus, and Facility Planning.

Place: National Institutes of Health, Building 1, One Center Drive, 9000 Rockville Pike, Bethesda, MD 20892 (Virtual Meeting).

Virtual Access: The meeting will be videocast and can be accessed from the NIH Videocast *https://videocast.nih.gov/* and the CCRHB website *https://ccrhb.od.nih.gov/meetings.html.*

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, 301–496–4272, *woodgs@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: June 24, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14023 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Letters of Interest (LOI) for Pediatric Focused NCI-MATCH Laboratories

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; extension.

SUMMARY: The National Cancer Institute (NCI) through its National Clinical Trials Network (NCTN) is developing a successor precision medicine trial to 'NCI-Molecular Analysis for Therapy Choice (NCI-MATCH)' entitled 'NCI-ComboMATCH'. The principal of this intiative is to overcome drug resistance to single-agent therapy by developing genomically-directed targeted agent combinations. All combinations must be supported by robust, preclinical *in vivo* evidence. Due to the coronavirus pandemic the NCI is providing an extension of the previously published notice in the **Federal Register** on March 11, 2020, to allow candidate more time to submit LOIs.

DATES: The due date for Letters Of Interest (LOIs) has been extended and should now be submitted to the National Cancer Institute (NCI), National Institutes of Health (NIH) on or before 5:00 p.m. EST on September 30, 2020.

ADDRESSES: Submit LOIs by email to *NCICOMBOMATCHLabApps@nih.gov.* 9609 Medical Center Drive, 3 West, Room 526, MSC 9728, Rockville, MD 20892.

FOR FURTHER INFORMATION CONTACT: Questions about this request for LOIs should be directed to *NCICOMBOMATCHLabApps@nih.gov.* James V. Tricoli, at 240–276–5725 or *tricolij@mail.nih.gov,* can also provide further information.

SUPPLEMENTARY INFORMATION: NCI-ComboMATCH trial leadership invites applications for Clinical Laboratory Improvements Program (CLIA) certified/accredited laboratories that test tumor specimens from patients utilizing Next-Generation Sequencing (NGS) assays to participate in the NCI-ComboMATCH trial. In order to support this trial, the designated laboratories participating in NCI-ComboMATCH will identify patients for the specific variants needed for trial eligibility. Laboratories will be required to contact any of the NCTN sites that have activated NCI-ComboMATCH if a specimen sent from one of these sites has a variant(s) that would potentially make the patient eligible for one of the treatment arms.

This notice was previously published in the **Federal Register** on March 11, 2020, page 14208–14210 (85 FR 14208). The purpose of this notice is to allow an additional 90 days for submission of the LOI. The due date for LOI submission has been extended from the previous date of June 30, 2020 to September 30, 2020 to allow more labs to submit. This is necessary due to the impact of the coronavirus pandemic. In accordance with 42 U.S.C. 285, of the Public Health Service Act, as amended. Similar to NCI-MATCH, NCI-ComboMATCH is conceived as a signal-seeking study. The NCI-ComboMATCH team will determine whether patients with tumor mutations, amplifications or translocations in the genetic pathway(s) of interest are likely to derive clinical benefit if treated with a combination of precision medicine agents targeting those specific pathway(s). This recruitment is for pediatric focused labs that can specifically screen 250 pediatric patients seen at NCTN sites per month.

Patients with histologically documented solid tumors, lymphomas and multiple myeloma whose disease has progressed following at least one line of standard systemic therapy or for whom no standard therapy exists are eligible if they meet the eligibility criteria for the trial.

The selected collaborating outside laboratories may only act (*i.e.,* refer patients) on any of the variant arms for which their assay reports actionable mutations of interest (aMOIs). The assay must also report all exclusionary variants for the arm unless these occur at a frequency of <1% in cancer patients.

Only CLIA accredited/certified laboratories located in the United States may be considered for addition to the laboratory network.

Letter of Interest (LOI) and Confidentiality Agreement

Candidate laboratories should submit a letter of interest to *NCICOMBOMATCHLabApps@nih.gov* stating:

- Statement of interest in the proposed activity
- Laboratory name
- Lead contact name, address, email address, and telephone number
- CLIA certification number
- Assay name
- Brief description of assay
  - Sensitivity and specificity for SNVs, indels, CNV, fusions
  - Method of analysis
  - Platform and variant calling
- Number of assays on pediatric patients per month
- Number assays on patients seen at NCTN study sites per month
- What other CLIA approved/certified tests have been validated in your laboratory?
- Willingness to contact sites regarding results with a potentially eligible for NCI-ComboMATCH
- Willingness to sign a collaboration agreement with NCI (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) and to share data and publication rights

Following an acceptable eligibility review to the NCI-ComboMATCH screening committee, the laboratory would execute a confidentiality agreement with the NCI and will be provided with a detailed list of eligibility and exclusion variants for arms (approved at that time). The lab would then be required to submit an application within 2 months for review by the NCI-ComboMATCH review committee. Candidate laboratories will be required to meet the following general requirements:

• Testing must be performed in a CLIA-certified or -accredited laboratory located in the United States.

• Assays can be on tumor tissue (including lymphoma) or circulating tumor DNA (ctDNA).

• Laboratory NGS panels must be analytically and clinically validated on DNA from human tumor tissues, with performance characteristics as follows:

 ○ Specificity at least 99% for single nucleotide variants, indels
 ○ Sensitivity at least 95% for single nucleotide variants, indels
 ○ Sensitivity of 90% for copy number variants (state fold of copy number variants that can be detected with 90% sensitivity)
 ○ 99% reproducibility between sequencers (if more than one sequencer is used) and between operators
 ○ Lower limit of detection for SNV, indels, CNV must be stated.

Laboratories must supply the following information in their application:

 ○ Lower limit of % tumor accepted, and whether (and which) enrichment procedures are employed
 ○ Whether the lab archives images of slides from the tumor
 ○ Whether the lab also runs germline as well as tumor with the assay (a simultaneous germline sequencing is not required by NCI-ComboMATCH)
 ○ A detailed description of assay procedures, including starting material, extraction of nucleic acids, quality assurance, quality metrics, data analysis and filters must be supplied.

• Laboratory NGS test panels must interrogate actionable mutations of interest (aMOIs) required for enrollment into the available variant arms. Applicant laboratories must state which NCI-ComboMATCH arms they would like to participate in.

• Academic laboratories must be located at a center that participates in NCI-ComboMATCH.

• The designated lab should be willing to provide residual nucleic acid from the sample they tested if the patient enrolls on NCI-ComboMATCH.

• Laboratories shall NOT advertise that they are screening laboratories for ComboMATCH eligibility without prior review by NCI and ECOG–ACRIN. Any press release or public disclosure requires clearance by NCI and the NCI-ComboMATCH team.

• Laboratories must agree to use the existing workflow established by the NCI NCI-ComboMATCH trial team to identify patients for the variant arms.

 ○ Laboratory results of NGS assays done for clinical care will be the subject of this initiative. There is no funding for ''screening'' a patient for NCI-ComboMATCH.
 ○ Laboratories must notify NCI-ComboMATCH sites that the laboratory results would potentially allow the patient to be eligible for NCI Combo MATCH.
 ○ Laboratories must track how many assays per month detect rare variants that could make a pediatric patient eligible for NCI-ComboMATCH.
 ○ If the clinician presents the NCI-ComboMATCH study and the patient is eligible and desires to enter the study, the laboratory must agree to enter results into the informatics system that assigns treatment in Combo MATCH (MATCHbox).
 ○ Laboratories must have a way to answer questions from Combo MATCH sites about their assay and must have a contact person for optimal communication with the NCI-ComboMATCH team.

• Prior to participation, laboratories must enter into a collaboration agreement with NCI. A sample agreement is available upon request. As part of such a collaboration agreement, laboratories must agree to provide the licensing rights described in the CTEP IP Option to the Pharmaceutical Collaborators who provided agents for the NCI-ComboMATCH trial (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) as well as agree to the data sharing and publication rights consistent with those agreements.

• No reimbursement for these activities (testing or notification of sites of NCI-ComboMATCH eligibility) exists.

Qualified laboratories serving underserved populations are encouraged to participate.

How to apply:

1. Submit letter of interest (LOI) as described above under ''Letter of Interest and Confidentiality Agreement'' to *NCICOMBOMATCHLabApps@nih.gov.*

2. LOIs will be accepted for 3 months from the date of this notice. LOIs will be reviewed immediately upon receipt.

3. Notification of acceptance, non-acceptance or questions from Steering Committee will be sent to the designated contact person as soon as the LOI has been reviewed. This notification will include further instructions if a full application is invited.

4. Applications that have not been submitted within 6 weeks of notification of acceptance of the LOI will be de-activated and not further considered.

5. DO NOT send a full application until you are invited to do so.

Review criteria for LOI:

Laboratory is a CLIA certified laboratory within the United States.

Academic laboratories must have NCI-ComboMATCH open at their site.

Laboratory NGS assay has adequate sensitivity and specificity.

Laboratory tests tumor tissue for rare variants as described in NCI-ComboMATCH.

Laboratory agrees to provide needed information for evaluation of the analytical validity of the test.

Laboratory is likely to screen at least 250 pediatric patients at NCTN sites for NCI-ComboMATCH per month.

Laboratory agrees to contact sites regarding NCI-ComboMATCH eligibility.

Laboratory agrees to a collaboration with NCI as detailed above.

Review criteria for full application:

Laboratory supplies evidence that the assay meets analytical requirements as detailed above.

Laboratories are capable of contacting clinical sites, tracking activity, and of screening at least 250 pediatric patients at NCTN sites per month to the study based on detection of potential variants.

Laboratories agree to execute a collaboration agreement with NCI, as well as to data sharing and sharing publication rights.

Laboratories agree to abide by the procedures in place for the NCI-ComboMATCH study and to collaborate fully with the NCI-ComboMATCH team.

For more information, contact *NCICOMBOMATCHLabApps@nih.gov.*

Dated: June 24, 2020.

James V. Tricoli,

Chief, Diagnostic Biomarkers and Technology Branch, Cancer Diagnosis Program, National Cancer Institute.

[FR Doc. 2020–14043 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30 Day Comment Request Application Process for Clinical Research Training and Medical Education at the Clinical Center and Its Impact on Course and Training Program Enrollment and Effectiveness (Clinical Center)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, contact: Robert M. Lembo, MD, Office of Clinical Research Training and Medical Education, NIH Clinical Center, National Institutes of Health, 10 Center Drive, Room 1N252C, Bethesda, MD 20892–1158, or call non-toll-free number (301) 496–2636, or Email your request, including your address to: *robert.lembo@nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 16, 2020, page 21255–21256 (85 FR 21255–21256) and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

The Clinical Center, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection Title: Application Process for Clinical Research Training and Medical Education at the NIH Clinical Center, OMB #0925–0698, Expiration date July 31, 2020, REVISION, National Institutes of Health Clinical Center (CC), National Institutes of Health (NIH).

Need and Use of Information Collection: The primary objective of the application process is to allow the Office of Clinical Research Training and Medical Education (OCRTME) at the NIH Clinical Center to evaluate applicants' qualifications to determine applicants' eligibility for courses and training programs managed by the Office. Applicants must provide the required information requested in the respective applications to be considered a candidate for participation. Information submitted by candidates for training programs is reviewed initially by OCRTME administrative staff to establish eligibility for participation. Eligible candidates are then referred to the designated training program director/administrator or training program selection committee for review and decisions regarding acceptance for participation. A secondary objective of the application process is to track enrollment in courses and training programs over time.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours is 333.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Clinical Electives Program	Pre Doctoral Students	300	1	20/60	100
Graduate Medical Education	Physicians	100	1	20/60	33
Medical Research Scholars Program	Pre Doctoral Students	200	1	20/60	67
Resident Electives Program	Physicians	100	1	20/60	33
Bioethics Fellowship Program	Pre Doctoral, Post-Doctoral	300	1	20/60	100
Total			1000		333

Dated: June 25, 2020.

Laura M. Lee,

Project Clearance Liaison, NIH Clinical Center, National Institutes of Health.

[FR Doc. 2020–14057 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Long-Term Services for Dementia Care.

Date: July 17, 2020.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Kimberly Firth, Ph.D.,Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, (301) 402–7702, *firthkm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 25, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14058 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Conflicts in Nephrology.

Date: July 27, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan K. Ivins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2190, MSC 7850, Bethesda, MD 20892, (301) 594–1245, *ivinsj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: July 27, 2020.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Cardiovascular Sciences.

Date: July 28–29, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7814, Bethesda, MD 20892, 301–451–8754, *nussb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member conflicts: Topics in Hepatology, Pharmacology, and Environmental Toxicology.

Date: July 28, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 24, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14022 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Letters of Interest (LOI) for NCI–MATCH Laboratories

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice, extension.

SUMMARY: The National Cancer Institute (NCI) through its National Clinical Trials Network (NCTN) is developing a successor precision medicine trial to 'NCI-Molecular Analysis for Therapy Choice (NCI–MATCH)' entitled 'NCI-ComboMATCH'. The principal of this intiative is to overcome drug resistance to single-agent therapy by developing genomically-directed targeted agent combinations. All combinations must be supported by robust, preclinical *in vivo* evidence. Due to the coronavirus pandemic the NCI is providing an extension of the previously published notice in the **Federal Register** on March 11, 2020 to allow candidate more time to submit LOIs. NCI-ComboMATCH trial leadership invites applications for Clinical Laboratory Improvements Program (CLIA) certified/accredited laboratories that test tumor specimens from patients utilizing Next-Generation Sequencing (NGS) assays to participate in the NCI-ComboMATCH trial. In order to support this trial, the designated laboratories participating in NCI-ComboMATCH will identify patients for the specific variants needed for trial eligibility. Laboratories will be required to contact any of the NCTN sites that have activated NCI-ComboMATCH if a specimen sent from one of these sites has a variant(s) that would potentially make the patient eligible for one of the treatment arms.

DATES: The due date for Letters of Interest (LOIs), published on March 11, 2020 (85 FR 14208), has been extended and should now be submitted to the National Cancer Institute (NCI), National Institutes of Health (NIH) on or before 5:00 p.m. EST on September 30, 2020.

ADDRESSES: Submit LOIs by email to *NCICOMBOMATCHLabApps@nih.gov.* 9609 Medical Center Drive, 3 West, Room 526, MSC 9728, Rockville, MD 20892.

FOR FURTHER INFORMATION CONTACT: Questions about this request for LOIs should be directed to *NCICOMBOMATCHLabApps@nih.gov.* James V. Tricoli, 240–276–5725 or *tricolij@mail.nih.gov,* can also provide further information.

SUPPLEMENTARY INFORMATION: This notice was previously published in the **Federal Register** on March 11, 2020, page 14208–14210 (85 FR 14208). The purpose of this notice is to allow an additional 90 days for submission of the LOI. The due date for LOI submission has been extended from the previous date of June 30, 2020 to September 30, 2020 to allow more labs to submit. This is necessary due to the impact of the coronavirus pandemic. In accordance with 42 U.S.C. 285, of the Public Health Service Act, as amended. Similar to NCI–MATCH, NCI-ComboMATCH is conceived as a signal-seeking study. The NCI-ComboMATCH team will determine whether patients with tumor mutations, amplifications or translocations in the genetic pathway(s) of interest are likely to derive clinical benefit if treated with a combination of precision medicine agents targeting those specific pathway(s). This recruitment is for labs that can specifically screen 200 patients seen at NCTN sites per month.

Patients with histologically documented solid tumors, lymphomas and multiple myeloma whose disease has progressed following at least one line of standard systemic therapy or for whom no standard therapy exists are eligible if they meet the eligibility criteria for the trial.

The selected collaborating outside laboratories may only act (*i.e.,* refer patients) on any of the variant arms for which their assay reports actionable mutations of interest (aMOIs). The assay must also report all exclusionary variants for the arm unless these occur at a frequency of <1% in cancer patients.

Only CLIA accredited/certified laboratories located in the United States may be considered for addition to the laboratory network.

Letter of Interest (LOI) and Confidentiality Agreement

Candidate laboratories should submit a letter of interest to *NCICOMBOMATCHLabApps@nih.gov* stating:

- Statement of interest in the proposed activity
- Laboratory name
- Lead contact name, address, email address, and telephone number
- CLIA certification number
- Assay name
- Brief description of assay
  - Sensitivity and specificity for SNVs, indels, CNV, fusions
  - Method of analysis
  - Platform and variant calling
- Number of assays on patients per month
- Number assays on patients seen at NCTN study sites per month
- What other CLIA approved/certified tests have been validated in your laboratory?
- Willingness to contact sites regarding results with a potentially eligible for NCI-ComboMATCH
- Willingness to sign a collaboration agreement with NCI (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) and to share data and publication rights

Following an acceptable eligibility review to the NCI-Combo MATCH screening committee, the laboratory would execute a confidentiality agreement with the NCI and will be provided with a detailed list of eligibility and exclusion variants for arms (approved at that time). The lab would then be required to submit an application within 2 months for review by the NCI-Combo MATCH review committee. Candidate laboratories will be required to meet the following general requirements:

- Testing must be performed in a CLIA-certified or -accredited laboratory located in the United States.
- Assays can be on tumor tissue (including lymphoma) or circulating tumor DNA (ctDNA).
- Laboratory NGS panels must be analytically and clinically validated on DNA from human tumor tissue, with performance characteristics as follows:
  - Specificity at least 99% for single nucleotide variants, indels
  - Sensitivity at least 95% for single nucleotide variants, indels
  - Sensitivity of 90% for copy number variants (state fold of copy number variants that can be detected with 90% sensitivity)
  - 99% reproducibility between sequencers (if more than one sequencer is used) and between operators
  - Lower limit of detection for SNV, indels, CNV must be stated.

  Laboratories must supply the following information in their application:
  - Lower limit of % tumor accepted, and whether (and which) enrichment procedures are employed
  - Whether the lab archives images of slides from the tumor
  - Whether the lab also runs germline as well as tumor with the assay (a simultaneous germline sequencing is not required by NCI-ComboMATCH)
  - A detailed description of assay procedures, including starting material, extraction of nucleic acids, quality assurance, quality metrics, data analysis and filters must be supplied.
- Laboratory NGS test panels must interrogate actionable mutations of interest (aMOIs) required for enrollment into the available variant arms.
- Academic laboratories must be located at a center that participates in NCI- Combo MATCH.
- The designated lab should be willing to provide residual nucleic acid from the sample they tested if the patient enrolls on NCI-ComboMATCH
- Laboratories shall NOT advertise that they are screening laboratories for ComboMATCH eligibility without prior review by NCI and ECOG–ACRIN. Any press release or public disclosure requires clearance by NCI and the NCI-ComboMATCH team.
- Laboratories must agree to use the existing workflow established by the NCI NCI-ComboMATCH trial team to identify patients for the variant arms.
  - Laboratory results of NGS assays done for clinical care will be the subject of this initiative. There is no funding for ''screening'' a patient for NCI-ComboMATCH.
  - Laboratories must notify NCI-ComboMATCH sites that the laboratory results would potentially allow the patient to be eligible for NCI-ComboMATCH.
  - Laboratories must track how many assays per month detect rare variants that could make a patient eligible for NCI-ComboMATCH.
  - If the clinician presents the NCI-ComboMATCH study and the patient is eligible and desires to enter the study, the laboratory must agree to enter the results into the informatics system that assigns treatment in NCI-ComboMATCH (MATCHbox).
  - Laboratories must have a way to answer questions from NCI-ComboMATCH sites about their assay and must have a contact person for optimal communication with the NCI-ComboMATCH team.
- Prior to participation, laboratories must enter into a collaboration agreement with NCI. A sample agreement is available upon request. As part of such a collaboration agreement, laboratories must agree to provide the licensing rights described in the CTEP IP Option to the Pharmaceutical Collaborators who provided agents for the NCI-ComboMATCH trial (*https://ctep.cancer.gov/branches/rab/intellectual_property_option_to_collaborators.htm*) as well as agree to the data sharing and publication rights consistent with those agreements.
- No reimbursement for these activities (testing or notification of sites of NCI-ComboMATCH eligibility) exists.

Qualified laboratories serving underserved populations are encouraged to participate.

How to apply:

1. Submit letter of interest (LOI) as described above under ''Letter of Interest and Confidentiality Agreement'' to *NCICOMBOMATCHLabApps@nih.gov.*
2. LOIs will be accepted for 3 months from the date of this notice. LOIs will be reviewed immediately upon receipt.
3. Notification of acceptance, non-acceptance or questions from Steering Committee will be sent to the designated contact person as soon as the LOI has been reviewed. This notification will include further instructions if a full application is invited.
4. Applications that have not been submitted within 6 weeks of notification of acceptance of the LOI will be de-activated and not further considered.
5. DO NOT send a full application until you are invited to do so.

Review criteria for LOI:

Laboratory is a CLIA-certified laboratory within the United States.

Academic laboratories must have NCI-ComboMATCH open at their site.

Laboratory NGS assay has adequate sensitivity and specificity.

Laboratory tests tumor tissue for rare variants as described in NCI-ComboMATCH.

Laboratory agrees to provide needed information for evaluation of the analytical validity of the test.

Laboratory is likely to screen at least 200 patients at NCTN sites per month for NCI-ComboMATCH.

Laboratory agrees to contact sites regarding NCI-ComboMATCH eligibility.

Laboratory agrees to a collaboration with NCI as detailed above.

Review criteria for full application:

Laboratory supplies evidence that the assay meets analytical requirements as detailed above.

Laboratories are capable of contacting clinical sites, tracking activity, and screening at least 200 patients at NCTN sites per month to the study based on detection of potential variants.

Laboratories agree to execute a collaboration agreement with NCI, as well as to data sharing and sharing publication rights.

Laboratories agree to abide by the procedures in place for the NCI-ComboMATCH study and to collaborate fully with the NCI-ComboMATCH team.

For more information, contact *NCICOMBOMATCHLabApps@nih.gov*.

Dated: June 24, 2020.

James V. Tricoli,

Chief, Diagnostic Biomarkers and Technology Branch, Cancer Diagnosis Program, National Cancer Institute.

[FR Doc. 2020–14044 Filed 6–29–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs for oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs for oral fluid testing.

HHS-Certified Laboratories Certified To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly:

Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438 (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295,

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159,

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Anastasia Marie Donovan,

Policy Analyst.

[FR Doc. 2020–14040 Filed 6–29–20; 8:45 am]

BILLING CODE 4162–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Mandatory Guidelines for Federal Workplace Drug Testing Programs (OMB No. 0930–0158)—Revision

SAMHSA will request OMB approval for a revision of the Federal Drug Testing Custody and Control Form (CCF) for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) dated January 23, 2017 (82 FR 7920) and using Oral Fluid (OFMG) dated October 25, 2019, and OMB approval for information provided by test facilities (laboratories and Instrumented Initial Test Facilities, IITFs) for the National Laboratory Certification Program (NLCP).

The CCF is used by all Federal agencies and employers regulated by the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) to document the collection and chain of custody of urine specimens at the collection site, for HHS-certified test facilities to report results, and for Medical Review Officers (MROs) to document and report a verified result. SAMHSA allows the use of the CCF as a paper or electronic form.

The current OMB-approved CCF has an August 31, 2020 expiration date. SAMHSA has resubmitted the CCF with revisions to the form for OMB approval. During 60-day public comment 7 commenter's submitted comments on the proposed changes to the CCF. These commenters were comprised of individuals, organizations, and private sector companies. All comments were reviewed and taken into consideration in the preparation of the revised CCF. The issues and concerns raised in the public comments for the CCF are set out *www.reginfo.gov/public/do/PRAMain.*

These revisions are listed below:

Copies 1–5

Revised Step 1

1. Added ''CDL State and No.'' to donor identification types
2. Added ''Collector Contact Info:'' and ''Other'' line (*e.g.,* email)

Revised Step 2

1. Put Urine and Oral Fluid checkboxes above Step 2 for collector to annotate
2. Expanded to 4 lines for collector entries:
   —General entry for Split, Single, or None Provided (same as current)
   —Entries specific to urine collection (moved ''Collector reads urine temperature within 4 minutes'' here; other entries same as current)
   —Entries specific to oral fluid collection: Added ''Split Type'' with checkboxes for Serial, Concurrent, and Subdivided; ''Each Device Within Expiration Date?'' with checkboxes Yes or No; and Volume Indicator(s) Observed checkbox)
   —Remarks (same as current)

Revised Step 3

1. Edited instruction to state ''collector affixes seal(s) to bottle(s)/tube(s)''

Revised Step 4 (Collector Section)

1. Edited ''Specimen Bottle(s) Released To'' box to state ''Specimen Bottle(s)/Tubes(s) Released To''

Copy 1 (Test Facility Copy)

Revised Step 4 (Accessioner Section)

1. Edited ''Specimen Bottle(s) Released To'' box to state ''Specimen Bottle(s)/Tubes(s) Released To''
2. Added ''Primary/Single Specimen Device Expiration Date'' and ''Split Specimen Device Expiration Date'' fields for accessioner to annotate expiration dates of oral fluid collection devices

Revised Step 5a (Certification and Reporting Section)

1. Removed analyte names and checkboxes
2. Repositioned results and checkboxes: Moved REJECTED FOR TESTING, ADULTERATED, SUBSTITUTED and INVALID RESULT checkboxes; moved POSITIVE checkbox to be under DILUTE
3. Added line for certifying scientist to record positive analytes and concentrations, and added ''*Analyte(s) in ng/mL*'' instruction (aligned under ''POSITIVE for:'')

Copy 2 (Medical Review Officer Copy)

Revised Step 5 (Donor Section)

1. Added line for donor email address
2. Edited donor certification statement to state ''specimen bottle/tubes''

Revised Step 6 (MRO section—Primary Specimen)

1. Put Urine and Oral Fluid checkboxes above Step 6 for MRO to annotate

Bottom of Copies

Revised Copy 1

1. Edited label/seal at bottom of Copy 1 to allow for modification (*e.g.,* perforations, label with transparent seal on one side, and separate label and seal)

Revised Copy 5

1. Removed Instructions for Completing the CCF from the back. SAMHSA will post instructions for completing the Federal CCF for urine and oral fluid on their website.

Based upon information from Federal agencies and from DOT concerning their regulated industries, the number of respondents has increased from 5.4 million to 6.7 million, which increases the total burden hours by 170,701.8–C;.

Laboratories and IITFs seeking HHS certification under the NLCP must complete and submit the NLCP application form. The NLCP application form has not been revised compared to the previous form.

Prior to an inspection, an HHS-certified laboratory or IITF is required to submit specific information regarding its procedures. Collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the testing procedures before arriving for the onsite inspection. The NLCP information checklist has not been revised compared to the previous form.

The annual total burden estimates for the CCF, the NLCP application, the NLCP information checklist, and the NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)
Custody and Control Form: [1]					
Donor	6,726,610	1	6,726,610	0.08	538,128.8
Collector	6,726,610	1	6,726,610	0.07	378,000
Laboratory	6,726,610	1	6,726,610	0.05	336,330
IITF	1	0	0	0.05	0
Medical Review Officer	6,726,610	1	6,726,610	0.05	270,000
NLCP Application Form: [2]					
Laboratory	5	5	5	3	15
IITF	0	0	0	3	0
Sections B and C—NLCP Inspection Checklist:					
Laboratory	29	1	29	1	29
IITF	0	0	0	1	0
Record Keeping:					
Laboratory	29	1	29	250	7,250
IITF	0	0	0	250	0
Total	6,726,673		26,906,503		1,529,753

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Carlos Graham,

Social Science Analyst.

[FR Doc. 2020–13986 Filed 6–29–20; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0131]

Agency Information Collection Activities: e-Allegations Submission

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

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted no later than August 31, 2020 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0131 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) Mail. Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: e-Allegations Submission.

OMB Number: 1651–0131.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Abstract: In the interest of detecting trade violations to customs laws, Customs and Border Protection (CBP) established the e-Allegations website to provide a means for concerned members of the trade community to confidentially report violations to CBP. The e-Allegations site allows the public to submit pertinent information that assists CBP in its decision whether or not to pursue the alleged violations by initiating an investigation. The information collected includes the name, phone number and email address of the member of the trade community reporting the alleged violation. It also includes a description of the alleged violation, and the name and address of the potential violators. The e-Allegations website is accessible at *https://apps.cbp.gov/eallegations/.*

Estimated Number of Respondents: 1,600.

Estimated Number of Total Annual Responses: 1,600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 400.

Dated: June 16, 2020.

Seth Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–13295 Filed 6–29–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES00000.L51100000.GF0000. LVEMM19M2070.19X]

Notice of Intent To Prepare an Environmental Impact Statement for the Twin Metals Project in the Superior National Forest, Lake and St. Louis Counties, Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Northeastern States District, Milwaukee, Wisconsin, intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts of issuing a proposed new preference right lease (MNES 57965) and approving a Mine Plan of Operation in the Superior National Forest in Lake and St. Louis Counties, Minnesota. The approval of a Mine Plan of Operation allows the lessee to access, and once other necessary permits are obtained, to mine federal minerals. The BLM will conduct a public scoping process, including public meetings. During this time, the public will be invited to submit comments.

DATES: The BLM will announce the dates of public scoping, including dates and locations of public meetings and the ways in which people may submit scoping comments, on its e-Planning website. The BLM will notify the public of scoping meetings at least 15 days prior to the event. Meeting dates, venues, and times will be announced by a news release to the media and postings on the project website.

ADDRESSES: The page that is dedicated to this project and its EIS is located at *https://eplanning.blm.gov/eplanning-ui/project/1503233/510.*

FOR FURTHER INFORMATION CONTACT: Derek Strohl, Planning and Environmental Coordinator, telephone: (414) 297–4416; address: 626 E Wisconsin Ave., Milwaukee, WI 43202; email: *BLM_ES_TMM_comments@blm.gov.* Contact Mr. Strohl if you wish to add your name to our project notification list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours per day, 7 days per week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Under 43 CFR 3592.1, the BLM must consult with other agencies involved when approving a Mine Plan of Operation. In addition, the State of Minnesota would need to issue a number of permits before mining activity could begin. The Minnesota Department of Natural Resources will serve as the responsible governmental unit for the preparation of a separate, state-level EIS. The BLM and the Minnesota Department of Natural Resources expect to coordinate their efforts on their respective EISs as appropriate, including during public scoping periods.

The Forest Service is serving as a cooperating agency in the preparation of the EIS. The Forest Service decisions to be made are (1) whether to consent to the leasing of certain National Forest System lands requested in the preference right lease application (PRLA, MNES 57965) and, if consent is granted, whether lease stipulations are necessary for the protection of surface resources; (2) whether to approve the Mine Plan of Operation pursuant to Section 14a of TMM's existing leases (MNES 1352 and MNES 1353); (3) whether to issue a Special Use Permit to allow the portion of the project that is on off-lease National Forest System lands; and (4) whether to approve a Forest Plan amendment, if analysis leads the Forest Service to conclude that an amendment is necessary and appropriate to complete the Action. This notice does not commit the Forest Service to amending the Forest Plan. However, scoping comments can help to inform the Forest Service's decision as to the need for a Forest Plan amendment.

In the event that the Forest Service determines that it intends to amend the Forest Plan, the public is hereby notified that the substantive requirements of the 2012 Planning Rule (36 CFR part 219) likely to be directly related to the Forest Plan amendment are 36 CFR 219.8 (b)(1), (2), and (3) regarding social and economic sustainability, 36 CFR 219.10(a)(1), (2), (3), (4), (6), (7), and (9), regarding integrated resource management for multiple use, 36 CFR 219.10 (b)(1)(vi), regarding management of designated areas, and 36 CFR 219.11(c), regarding timber requirements based on the National Forest Management Act.

The proposed action is to issue a preference right lease and approve a Mine Plan of Operation for the mining of federal hard rock minerals in the Superior National Forest. The proposed activities would occur approximately 10 miles southeast of Ely, Minnesota, South of State Highway 1, in an area southeast of the South Kawishiwi River. The proposed Mine Plan of Operation details the proposed exploration, prospecting, testing, development and mining operations to be conducted to access federal minerals. Additional approvals by the State of Minnesota are required to conduct any mining. Mining would include critical minerals such as copper, nickel, cobalt, precious and platinum-group metals. The total surface footprint for mining is estimated at 1,156 acres, 400 acres of which is federal land managed by the U.S. Department of Agriculture, Forest Service. The surface-disturbing components include a processing facility, a tailings management site, three ventilation shafts, a power line corridor, access roads, and a water intake corridor.

The proposed Mine Plan of Operation describes the lifecycle of the mine. Construction of the mine would take two and a half years. After construction, the mine would operate for 25 years. Interim reclamation would begin on the dry stack facility as portions of it are completed, and final reclamation would follow the end of the 25-year period of mine operation.

The Mine Plan of Operation estimates that approximately 163 million tons of ore would be removed. Mining and crushing would occur 24 hours per day, 7 days per week. Ore would be crushed underground and processed in the plant to recover copper, nickel, cobalt, gold, silver, platinum, and palladium. Tailings generated by this process would be dewatered and placed either in the tailings management site, also known as the dry stack facility, or mixed with a binder and used to backfill mined-out stopes. The current Mine Plan of Operation is available on the BLM's e-planning website at *https://eplanning.blm.gov/eplanning-ui/project/1503233/510.*

The public will be invited to submit comments during a scoping period. Prior to the submission of any comments, if you provide 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.

The purpose of the public scoping process will be to identify relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the federal EIS. The BLM has identified the following preliminary issues associated with the project: (1) The potential for acid-rock drainage or other water quality impacts from ore and tailings; (2) regional socioeconomics, including the generation of high wage-paying jobs and the potential for impacts to water resources to degrade Ely's tourism-based economy; and (3) the potential impacts to recreation and wilderness, including the Boundary Waters Canoe Area Wilderness (BWCAW), approximately five miles from the proposed mine site. Scoping will also be used to determine if it is necessary to amend the Forest Plan to accommodate the Proposed Action.

The BLM will coordinate the scoping process as provided in 36 CFR 800.2(d)(3) (54 U.S.C. 306108) to help fulfill the National Historic Preservation Act (NHPA, as amended) review process. The information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the NHPA.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Federal, state, and local agencies, along with tribes and other stakeholders who may be interested in or affected by the proposed project that the BLM is evaluating, will be invited to participate in the scoping process. Six federal and tribal agencies have agreed to participate in this process as cooperating agencies, as follows:

- U.S. Department of Agriculture, Forest Service
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- Bois Forte Band of Chippewa
- Fond du Lac Band of Lake Superior Chippewa
- Grand Portage Band of Lake Superior Chippewa

Authority: 40 CFR 1501.7.

Gary Torres,

Acting State Director, BLM-Eastern States.

[FR Doc. 2020–14051 Filed 6–29–20; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–30430; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before June 6, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by July 15, 2020.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 6, 2020. Pursuant to § 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

KENTUCKY

Jefferson County

Kirby, Harriet Griswold and Judge Samuel Bonner, House (Jefferson County MRA), 2722 Maxey Ln., Louisville, MP100005344

MISSOURI

Jasper County

Webb, Elijah Thomas, House, 4 South Liberty St., Webb City, SG100005346

McDonald County

Old McDonald County Jail, 200 East 3rd St., Pineville, SG100005347

Morgan County

Second Baptist Church and Booker T. Washington School Historic District, 313 South Monroe St., Versailles, SG100005348

St. Louis Independent City

Kingshighway Hills Commercial District, 3701–3835 South Kingshighway Blvd., St. Louis, SG100005349

OREGON

Washington County

Fogelbo House, 8740 SW Oleson Road, Portland, SG100005343

Additional documentation has been received for the following resource:

KANSAS

Harvey County

Newton Main Street Historic District II (Additional Documentation), 411–825 North Main St. and 414–726 North Main St., Newton, AD03001146

Authority: Section 60.13 of 36 CFR part 60.

Dated: June 9, 2020.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–14032 Filed 6–29–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 201R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mkelly@usbr.gov;* telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
XM Extraordinary maintenance
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

COLUMBIA-PACIFIC NORTHWEST—INTERIOR REGION 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New contract action:

17. Title transfer agreements; Idaho, Washington, Oregon, Montana, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

CALIFORNIA-GREAT BASIN—INTERIOR REGION 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract action:

52. Title transfer agreements; California, Nevada, and Oregon: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

Completed contract action:

45. San Luis and Delta-Mendota Water Authority, CVP, California: Renewal of OM&R contract. Contract executed January 14, 2020.

LOWER COLORADO BASIN—INTERIOR REGION 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

New contract actions:

14. Wilbur G. and Carrol D. Schroeder, BCP, California: Terminate contract No. 6–07–30–W0137 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

15. Sunmor Properties, Inc., BCP, California: Terminate contract No. 6–07–30–W0139 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

16. Ronnie and Linda Herndon, BCP, California: Terminate contract No. 6–07–30–W0138 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

17. Jack D. Brown, BCP, California: Terminate contract No. 7–07–30–W0149 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

18. Palms River Resort, Inc., BCP, California: Offer a contract to the current landowner for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

Completed contract actions:

9. Fort McDowell Yavapai Nation and Central Arizona Water Conservation District, CAP, Arizona: Execute a CAP water lease for Fort McDowell Yavapai Nation to lease 3,933 acre-feet of its CAP water to Central Arizona Water Conservation District during calendar year 2020. Contract executed January 15, 2020.

11. San Carlos Apache Tribe and Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease for San Carlos Apache Tribe to lease 1,720 acre-feet of its CAP water to Pascua Yaqui Tribe during calendar year 2020. Contract executed February 7, 2020.

13. City of Needles and The Metropolitan Water District of Southern California, Lower Colorado Water Supply Project, California: Amend contract No. 06–XX–30–W0452 to extend the timeframe to complete a study that is required under the contract from December 31, 2019, to December 31, 2024. Contract executed January 27, 2020.

UPPER COLORADO BASIN—INTERIOR REGION 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract action:

30. Title transfer agreements; Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

Completed contract action:

29. Mancos Water Conservancy District, Mancos Project, Mancos, Colorado: Pursuant to Public Law 106–549 (114 Stat. 2743), the Secretary is authorized to contract with the District for the use of project facilities for the impounding, storage, diversion, and carriage of non-project water for the purpose of irrigation, domestic, M&I, and any other beneficial purposes. Contract No. 19–WC–40–750, among the District, Reclamation, and the Miles Trust, for carriage of 0.25 cfs is pending execution following approval of NEPA documentation. Contract executed March 10, 2020.

MISSOURI BASIN—INTERIOR REGION 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

New contract actions:

34. Dickey-Sargent ID; Garrison Diversion Unit, P–SMBP; North Dakota: Consideration for a repayment contract for assigned power investment costs.

35. Pitkin County, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contract at Ruedi Reservoir.

36. Denise J. Evans, Shoshone Project, Wyoming: Consideration for renewal of contract No. 009E6A0045.

37. Gering-Fort Laramie ID, North Platte Project, Wyoming and Nebraska: Consideration of repayment contract for XM funded pursuant to Subtitle G of Public Law 111–11.

38. Huntley ID, Huntley Project, Montana: Consideration of repayment contract for XM funded pursuant to Subtitle G of Public Law 111–11.

39. Title transfer agreements; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

Modified contract action:

24. Dickey-Sargent ID; Garrison Diversion Unit, P–SMBP; North Dakota: Consideration of a contract for irrigation storage in Jamestown Reservoir.

Completed contract actions:

19. Mid-Dakota Rural Water System, Inc., South Dakota: Consideration of an amendment to agreement No. 5–07–60–W0223 to reflect the payoff of loans. Contract executed January 31, 2019.

29. Ptarmigan Partners, LLC and Christine-Elliot Armstrong Revocable Trust and Andrew W. Armstrong Revocable Trust, Shoshone Project, Cody, Wyoming: Consideration for amendment to contract No. 019E6A0227. Contract executed December 16, 2019.

Discontinued contract action:

13. North Dakota State Water Commission, Snake Creek Pumping Plant, North Dakota: Consideration for a use-of-facilities contract.

Lisa A. Vehmas,

Acting Director, Policy and Programs.

[FR Doc. 2020–13984 Filed 6–29–20; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1203]

Certain Rolled-Edge Rigid Plastic Food Trays; Institution of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Correction of notice.

SUMMARY: Correction is made to notice 85 FR 37689, which was published on June 23, 2020; the notice published in the **Federal Register** incorrectly states: ‘‘The Office of Unfair Import Investigations will not participate as a party in this investigation.’’ As indicated in paragraph 3(c), the Office of Unfair Import Investigations has been named a party to the investigation.

By order of the Commission.

Issued: June 24, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–13996 Filed 6–29–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number: 1110–0071]

Agency Information Collection Activities; Proposed eCollection eComments Request; National Use-of-Force Data Collection: Extension of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation's (FBI's) Criminal Justice Information Services Division is 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 30 days until July 30, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and suggestions regarding the items contained in this notice, especially the estimated burden and associated response time, may be sent for consideration in a number of ways. OMB recommends that written comments be emailed to *useofforcepublicnotice@fbi.gov.* Physical letters with comments and suggestions may be directed to Ms. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Letters may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503 or emailed to OMB at *OIRA_submissions@obb.eop.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 FBI, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* National Use-of-Force Data Collection.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1110–0071. Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Federal, state, local, and tribal law enforcement agencies.

Abstract: The FBI has a long-standing tradition of collecting data and providing statistics concerning Law Enforcement Officers Killed and Assaulted (LEOKA) and justifiable homicides. To provide a better understanding of the incidents of use of force by law enforcement, the Uniform Crime Reporting (UCR) Program developed a new data collection for law enforcement agencies to provide information on incidents where use of force by a law enforcement officer has led to the death or serious bodily injury of a person, as well as when a law enforcement officer discharges a firearm at or in the direction of a person.

When a use of force occurs, Federal, state, local, and tribal law enforcement agencies provide information to the data collection on characteristics of the incident, subjects of the use of force, and the officers who applied force in the incident. Agencies positively affirm, on a monthly basis, whether their agency did or did not have a use of force that resulted in a fatality, a serious bodily injury to a person, or a firearm discharge at or in the direction of a person. When no use-of-force incident occurs in a month, agencies submit a zero report. Enrollment information from agencies and state points of contact is collected when the agency or contact initiates participation in the data collection. Enrollment information is updated no less than annually to assist with managing this data.

The new data collection defines a law enforcement officer using the current LEOKA definition: ''All local, county, state, and federal law enforcement officers (such as municipal, county police officers, constables, state police, highway patrol, sheriffs, their deputies, federal law enforcement officers, marshals, special agents, etc.) who are sworn by their respective government authorities to uphold the law and to safeguard the rights, lives, and property of American citizens. They must have full arrest powers and be members of a public governmental law enforcement agency, paid from government funds set aside specifically for payment to sworn police law enforcement organized for the purposes of keeping order and for preventing and detecting crimes, and apprehending those responsible.''

The definition of ''serious bodily injury'' is based, in part, on 18 United States Code (U.S.C.), Section 2246 (4), to mean ''bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.'' These actions include the use of a firearm; an electronic control weapon (*e.g.,* Taser); an explosive device; pepper or OC (oleoresin capsicum) spray or other chemical agent; a baton; an impact projectile; a blunt instrument; hands-fists-feet; or canine.

(5) *A total number of respondents and the amount of time estimated for an average respondent to respond:* As of March 2020, a total of 6,763 agencies covering 393,274 law enforcement officers were enrolled in the National Use-of-Force Data Collection. The burden hours per incident are estimated to be 0.63 of an hour for completion, around 38 minutes per incident.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Burden estimates are based on sources from the FBI's UCR Program, the Bureau of Justice Statistics (BJS), and the Centers for Disease Control (CDC). The BJS recently estimated that approximately 1,400 fatalities attributed to a law enforcement use of force occur annually (Planty, et al., 2015, *Arrest-Related Deaths Program: Data Quality Profile, http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5260*). In addition, the CDC estimates the incidences of fatal and nonfatal injury—including those due to legal intervention—from emergency department data. In their study, *The real risks during deadly police shootouts: Accuracy of the naïve shooter,* Lewinski, et al., (2015) estimate law enforcement officers miss their target approximately 50 percent of the time at the firing range. This information was used to develop a simple estimate for the number of times officers discharge a firearm at or in the direction of a person but do not strike the individual. In addition, the UCR Program collects counts of the number of sworn and civilian law enforcement employees in the nation's law enforcement agencies.

The following table shows burden estimates based on previous estimation criteria and current National Use-of-Force Data Collection enrollment numbers.

ESTIMATED BURDEN FOR ALL LAW ENFORCEMENT AGENCIES IN ANNUAL COLLECTION

Timeframe	Reporting group	Approximate number of officers from participating agencies	Maximum per capita rate of use-of-force occurrence per officer	Minimum per capita rate of use-of-force occurrence per officer	Maximum estimated number of incidents	Minimum estimated number of incidents	Estimated burden hours per incident	Maximum estimate total number of burden hours	Minimum estimate total number of burden hours
Collection (Annual).	All agencies submitting data.	393,274	0.122	0.012	47,979	4,719	0.63	30,227	2,973

Based on previous estimation criteria and current enrollment numbers, the FBI is requesting 30,227 burden hours for the annual collection of this data.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: June 24, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–14019 Filed 6–29–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), 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 (PRA).

DATES: Comments are encouraged and will be accepted for 60 days until August 31, 2020.

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 Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

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.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and extension of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

3. *The agency form number:* EOIR–27 (OMB #1125–0005).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Attorneys or representatives notifying the Board of Immigration Appeals (Board) that they are representing a party in proceedings before the Board.

Other: None.

Abstract: This information collection is necessary to allow an attorney or representative to notify the Board that he or she is representing a party before the Board.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 36,299 respondents will complete each form within approximately 6 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 3,630 annual burden hours.

If additional information is required contact: Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–14024 Filed 6–29–20; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Supplemental Final Environmental Impact Statement

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Notice of Intent to Prepare a Draft Supplemental Final Environmental Impact Statement.

SUMMARY: Notice of Intent to Prepare a Draft Supplemental Final Environmental Impact Statement (DSFEIS) for development of a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) by the U.S. Department of Justice, Federal Bureau of Prisons. Under consideration for development are vacant areas of the property comprising the United States Penitentiary (USP) in Leavenworth, Kansas.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and the DSFEIS may be directed to Kimberly S. Hudson, COR, Site Selection Specialist, Construction and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street NW, Room 901–5, Washington, DC 20534, Telephone: 202–616–2574/Facsimile: 202–260–0702/Email: *kshudson@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Bureau of Prisons (BOP) is responsible for carrying out judgments of the federal courts whenever a period of confinement is ordered. Its mission is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

Pursuant to Section 102, 42 U.S.C. 4332, of the National Environmental Policy Act (NEPA) of 1969, as amended and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), a *Notice of Intent to Prepare a*

Draft Environmental Impact Statement (DEIS) for development of a new FCI and FPC was published in the **Federal Register** on December 29, 2010, (Volume 75, Number 249). Following publication of the DEIS on November 18, 2011, a public hearing was held on December 11, 2011, in Leavenworth, Kansas with the public comment period concluding on January 2, 2012. Publication of the FEIS occurred on April 10, 2015 with the public comment period lasting until May 15, 2015. A decision whether to proceed with the proposed action and if so, where, was delayed and a Record of Decision to be issued by the Director of the BOP, pursuant to the requirements of NEPA and U.S. Department of Justice regulations, was not adopted.

The BOP is resuming the NEPA process with the intent of preparing a DSFEIS to provide current information about the proposed project, the purpose and need for proceeding with developing a new FCI and FPC in Leavenworth, Kansas, and to provide the public, elected and appointed officials, regulatory agencies, and others the opportunity to voice their interests and provide comments concerning the proposed action.

Proposed Action

To accommodate a portion of the federal inmate population, the BOP proposes to develop a new FCI and FPC within undeveloped areas comprising the USP property in Leavenworth, Kansas. The proposed FCI would be designed to house approximately 1,152 medium-security male inmates and the FPC would be designed to house approximately 256 minimum-security male inmates for a total population of approximately 1,408 inmates. The DSFEIS, to be prepared by the BOP, will analyze the potential impacts of new correctional facility construction and operation.

Among the objectives for developing the proposed FCI and FPC is to meet the on-going need for modern and secure correctional facilities and infrastructure, as well as to address an identified need for a new FCI and FPC in Leavenworth. With increasingly aged and outdated federal correctional facilities, the BOP is continuously working to improve the system's infrastructure through modernization of existing facilities when possible and construction of new institutions when necessary. As an example, USP Leavenworth was one of three first-generation federal prisons constructed in the early 1900s and continues in operation today while other operating federal correctional facilities were constructed over 50 years ago. Hence, development of a new FCI and FPC in Leavenworth is among the BOP's priority projects.

Once developed, the new FCI and FPC would improve living and working conditions for inmates and staff and be an advancement over conditions in many current BOP institutions. Improving living and working conditions has been shown to reduce the levels of stress and depression among inmates and staff, resulting in an overall positive effect on institution operation, safety, and security.

Development of a new FCI and FPC in Leavenworth will ensure that the federal criminal justice system in general, and the BOP in particular, continues to function in a quality manner while addressing the need for modern, secure, efficient and cost-effective institutions. Doing so will also allow the BOP to continue to accomplish its mission to uphold justice and public safety, meet the needs of current and future federal inmate populations, and provide for the continued safety and security of inmates, staff and the public.

The Process

The process of evaluating the potential environmental impacts associated with federal correctional facility development and operation involves the analysis of many factors and conditions including, but not limited to: Topography, geology, soils, hydrology, biological resources, cultural resources, hazardous materials, visual and aesthetic features, fiscal considerations, population/employment/housing characteristics, community services and facilities, land uses, utility services, transportation systems, meteorological conditions, air quality and noise.

Alternatives

In developing the DEIS in 2011 and FEIS in 2015, the No Action alternative, other actions considered and eliminated, and alternative development areas for the proposed FCI and FPC were thoroughly examined. Alternative development areas examined at that time consisted of BOP-owned property contiguous to the existing USP located in Leavenworth, Kansas. All alternatives considered then will be fully and thoroughly re-examined in the DSFEIS.

Scoping Process

Prior to preparation of the DEIS in 2011, opportunities for public involvement were provided in order to determine the issues to be examined in the DEIS. The scoping process began with a Scoping Meeting on January 20, 2011, in Leavenworth, Kansas with the meeting location, date, and time well publicized and arranged to allow for members of the public, as well as representatives of government agencies, organizations, and interest groups to attend. The meeting was held to allow interested persons to formally express their views on the scope and significant issues to be studied as part of the DEIS process. The meeting also provided for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by NEPA and the National Historic Preservation Act of 1966, as amended.

Following publication of the DEIS on November 18, 2011, a public hearing was held on December 11, 2011, in Leavenworth, Kansas with the hearing location, date, and time well publicized and arranged to allow for maximum public involvement and attendance. The hearing was held to share project-related information and to allow interested persons to offer comments and questions concerning the proposed action and the findings of the DEIS as stipulated by NEPA. Public comments were received by the BOP until the end of the comment period on January 2, 2012.

On April 10, 2015, the BOP published a FEIS with the public review and comment period lasting until May 15, 2015. A decision on whether to proceed with the proposed action and if so, where, was delayed and a Record of Decision was not adopted. With the passage of time, the BOP is resuming the NEPA process with the intent of preparing a DSFEIS to provide current information about the proposed project, the purpose and need for proceeding with developing a new FCI and FPC in Leavenworth, Kansas, and to provide the public, elected and appointed officials, regulatory agencies, and others the opportunity to voice their interests and provide comments concerning the proposed action. In resuming the NEPA process, the BOP distributed a letter on June 15, 2020 to interested parties informing them that preparation of the DSFEIS would soon commence.

Availability of DSFEIS

Public notice will be given concerning the availability of the DSFEIS for public review and comment along with plans for a public hearing following DSFEIS publication.

Dated: June 26, 2020.

Kimberly S. Hudson,

COR, Site Selection Specialist, Construction and Environmental Review Branch.

[FR Doc. 2020–14216 Filed 6–29–20; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 22, 2020 (85 FR 37473).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, June 25, 2020.

CHANGES IN THE MEETING: Matter to be removed from the agenda of an agency meeting: 5. NCUA Rules and Regulations, Risk-Based Net Worth.

CONTACT PERSON FOR MORE INFORMATION: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2020–14102 Filed 6–26–20; 11:15 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–049; NRC–2020–0088]

Oklo, Inc.; Oklo Power LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; notice of hearing and opportunity to petition for leave to intervene; order imposing procedures.

SUMMARY: On March 11, 2020, Oklo Power LLC, a subsidiary of Oklo, Inc., submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) application for one micro-reactor, identified as the Aurora, to be located at the Idaho National Laboratory, Idaho. A notice of receipt and availability of this application was published in the **Federal Register** on March 30, 2020. Notice of the NRC's docketing the application was published in the **Federal Register** on June 16, 2020. A hearing will be held, at a time and place to be set in the future by the NRC or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated March 11, 2020.

DATES: A request for a hearing or petition for leave to intervene must be filed by August 31, 2020. Any potential party, as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to sensitive unclassified non-safeguards information (SUNSI) and/or safeguards information (SGI) is necessary to respond to this notice must request document access by July 10, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0088 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0088. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application will also be available at *https://www.nrc.gov/reactors/new-reactors/advanced/oklo.html.*

FOR FURTHER INFORMATION CONTACT: Jan Mazza, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0498; email: *Jan.Mazza@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), and the regulations in 10 CFR part 2, ''Agency Rules of Practice and Procedure,'' 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' notice is hereby given that a hearing will be held, at a time and place to be set in the future by the NRC or designated by the Board. The hearing will consider the COL application, dated March 11, 2020 (ADAMS Accession No. ML20075A000), for one micro-reactor at the Idaho National Laboratory located in Idaho, pursuant to Section 103 of the Act and 10 CFR part 52. The reactor is to be identified as the Aurora. The notice of receipt and availability of this COL application was previously published in the **Federal Register** on April 3, 2020 (85 FR 19032). The notice of the NRC's docketing of the COL application was published in the **Federal Register** on June 16, 2020 (85 FR 36427). The docket number established for this application is 52–049.

The hearing will be conducted by a Board that will be designated by the Chief Judge of the Atomic Safety and Licensing Board Panel or will be conducted by the Commission. Notice as to the membership of the Board would be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the COL application and will document its findings in a safety evaluation report. The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.23, ''Referral to the ACRS,'' and the ACRS will report on those portions of the application that concern safety.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d), the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC's website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''Cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including SUNSI and SGI). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI, SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOGCMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention; and

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic questionnaire for investigations processing website, a secure website that is owned and operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an Federal Bureau of Investigation identification and criminal history records check.

(d) A check or money order payable in the amount of $340.00 [4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted.

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, Office of Administration, ATTN: Personnel Security Branch, Mail Stop TWFN–07D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.[5]

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's final adverse

[4] This fee is subject to change pursuant to DCSA's adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Agreement or Affidavit for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

determination with respect to trustworthiness and reliability for access to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: June 24, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," no "need to know," or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
A + 60	Decision on contention admission.

[7] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

[FR Doc. 2020–13993 Filed 6–29–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0127]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This biweekly notice includes all amendments issued, or proposed to be issued, from June 2, 2020, to June 15, 2020. The last biweekly notice was published on June 16, 2020.

DATES: Comments must be filed by July 30, 2020. A request for a hearing or petitions for leave to intervene must be filed by August 31, 2020.

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

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0127. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0127, facility name, unit number(s), docket number(s), application date, and subject 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–2020–0127.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

B. Submitting Comments

Please include Docket ID NRC–2020–0127, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, 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 the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown below, the Commission finds that the licensee's analyses provided, consistent with title 10 of the *Code of Federal Regulations* (10 CFR) section 50.91 is sufficient to support the proposed determination that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination, any hearing will take place after issuance. The Commission expects that the need to take action on an amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at. Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The table below provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

TABLE 1—LICENSE AMENDMENT REQUESTS

Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC	
Application Date	April 30, 2020.
ADAMS Accession No	ML20121A185.
Location in Application of NSHC	Pages 9–11 of Attachment 1.
Brief Description of Amendments	The proposed amendment would modify Action statements in Technical Specification (TS) S 3.6.4, ''Containment Isolation Valves.'' Specifically, the amendment would replace the word ''valve'' with the word ''barrier,'' and the words ''each affected penetration that is open'' with ''the affected penetration(s)'' in the TS 3.6.4 Action statements. The proposed amendment would also replace two instances of ''penetration'' with ''penetration flow path.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
Docket Nos	50–395.

TABLE 1—LICENSE AMENDMENT REQUESTS—Continued

NRC Project Manager, Telephone Number	Shawn Williams, 301–415–1009.
Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit 1; Berrien County, MI	
Application Date	June 8, 2020.
ADAMS Accession No	ML20164A044.
Location in Application of NSHC	Pages 15–17 of Enclosure 2.
Brief Description of Amendments	The proposed amendment would revise Technical Specification 5.5.14, "Containment Leakage Rate Testing Program," to extend the frequency of the primary containment integrated leak rate test, or Type A test, at Cook Nuclear Plant, Unit 1. Specifically, the proposed amendment would allow for a one-time extension of the integrated leak-rate test frequency from 15 years to no later than the plant restart after the Cook Nuclear Plant, Unit 1, Spring 2022 refueling outage (i.e., approximately 15 years and 5 months).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.
Docket Nos	50–315.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Application Date	April 1, 2020.
ADAMS Accession No	ML20111A145.
Location in Application of NSHC	Pages 2–4 of Attachment 1.
Brief Description of Amendments	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–529, "Clarify Use and Application Rules." The proposed amendment would modify technical specification (TS) requirements in TS Sections 1.3 and 3 .0 regarding limiting condition for operation and surveillance requirement usage.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	John C. McClure, Nebraska Public Power District, P.O. Box 499, Columbus, NE 68602–0499.
Docket Nos	50–298.
NRC Project Manager, Telephone Number	Thomas Wengert, 301–415–4037.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Application Date	April 1, 2020.
ADAMS Accession No	ML20101H298.
Location in Application of NSHC	Pages 3–4 of Attachment 1.
Brief Description of Amendments	The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–566, "Revise Actions for Inoperable RHR [Residual Heat Removal] Shutdown Cooling Subsystems." The proposed amendment would revise the technical specification actions applicable when an RHR shutdown cooling subsystem is inoperable.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	John C. McClure, Nebraska Public Power District, P.O. Box 499, Columbus, NE 68602–0499.
Docket Nos	50–298.
NRC Project Manager, Telephone Number	Thomas Wengert, 301–415–4037.
Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX	
Application Date	May 21, 2020.
ADAMS Accession No	ML20142A496.
Location in Application of NSHC	Pages 31–33 of Attachment I.
Brief Description of Amendments	The amendments would authorize changes and clarifications to specific emergency action levels of the Emergency Plan, and supporting bases discussions, for the Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004.
Docket Nos	50–445, 50–446.
NRC Project Manager, Telephone Number	Dennis Galvin, 301–415–6256.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, see (1) the application for amendment; (2) the amendment; and (3) the Commission's related letter, Safety Evaluation, and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

TABLE 2—LICENSE AMENDMENT ISSUANCES

Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC	
Date Issued	March 31, 2020.
ADAMS Accession No	ML20050D371.
Amendment Nos	176.
Brief Description of Amendments	The amendment allows one train of the essential services chilled water system (ESCWS) to be inoperable for up to 7 days from the currently allowed 72 hours for extended maintenance activities on the ESCWS and air handlers supported by the ESCWS for equipment reliability. Also, the amendment removes an expired note in numerous technical specification sections that was previously added by implementation of Amendment No. 153.
Docket Nos	50–400.
Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 3, LLC; Indian Point Nuclear Generating Station, Unit No. 3; Westchester County, NY	
Date Issued	June 2, 2020.
ADAMS Accession No	ML20100H992
Amendment Nos	269.
Brief Description of Amendments	The amendment revised Technical Specification (TS) 3.7.7, ''City Water,'' Surveillance Requirement 3.7.7.2, and TS 3.7.6, ''Condensate Storage Tank,'' Required Action A.1, to allow one of the backflow preventer isolation valves on the Indian Point Unit 3 city water header supply to be maintained closed when the steam generators are relied upon for heat removal, provided the requirements of TS Limiting Condition for Operation 3.7 are met.
Docket Nos	50–286.
Exelon FitzPatrick, LLC and Exelon Generation Company, LLC; James A. FitzPatrick Nuclear Power Plant, LLC; Oswego County, NY	
Date Issued	June 2, 2020.
ADAMS Accession No	ML20094G903.
Amendment Nos	335.
Brief Description of Amendments	The amendment revised the Technical Specifications (TSs) by adding a new Limiting Condition for Operation (LCO) 3.0.8 to address conditions where one or more snubbers are unable to perform their associated support function. A conforming change is also made to TS LCO 3.0.1 to reference TS LCO 3.0.8.
Docket Nos	50–333.
Exelon Generation Company, LLC; Braidwood Station, Units 1 and 2; Will County, IL	
Date Issued	June 9, 2020.
ADAMS Accession No	ML20118C429.
Amendment Nos	210, 210.
Brief Description of Amendments	The amendments revised the ultimate heat sink inventory verification (Technical Specification 3.7.9) from a level-based to volume-based verification.
Docket Nos	50–456, 50–457.

TABLE 2—LICENSE AMENDMENT ISSUANCES—Continued

Exelon Generation Company, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL, Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL	
Date Issued	May 28, 2020.
ADAMS Accession No	ML19351D750.
Amendment Nos	231, 268, 261.
Brief Description of Amendments	The amendments revised the technical specifications (TSs) associated with TS 3.5.2, "RPV [Reactor Pressure Vessel] Water Inventory Control [WIC]," and TS 3.8.2, "AC [Alternating Current] Sources-Shutdown," surveillance requirements considered no longer necessary following NRC-approved licensing activity at these sites. TS 3.3.5.2, "Reactor Pressure Vessel (RPV) Water Inventory Control Instrumentation," was revised to support instrumentation functions. Additionally, various edits revised RPV WIC-related TSs to add consistency and clarity. For Dresden, Units 2 and 3 only, TS 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," was revised to support Modes 4 and 5 operations.
Docket Nos	50–461, 50–237, 50–249.

Dated: June 23, 2020.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–13816 Filed 6–29–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 29, July 6, 13, 20, 27, August 3, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of June 29, 2020

There are no meetings scheduled for the week of June 29, 2020.

Week of July 6, 2020—Tentative

There are no meetings scheduled for the week of July 6, 2020.

Week of July 13, 2020—Tentative

There are no meetings scheduled for the week of July 13, 2020.

Week of July 20, 2020—Tentative

There are no meetings scheduled for the week of July 20, 2020.

Week of July 27, 2020—Tentative

There are no meetings scheduled for the week of July 27, 2020.

Week of August 3, 2020—Tentative

There are no meetings scheduled for the week of August 3, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please 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.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 26, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–14171 Filed 6–26–20; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–184 and CP2020–208; MC2020–185 and CP2020–209]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 2, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. Docket No(s).: MC2020–184 and CP2020–208; Filing Title: USPS Request to Add Priority Mail & First-Class Package Service Contract 152 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: June 24, 2020; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: July 2, 2020.

2. Docket No(s).: MC2020–185 and CP2020–209; Filing Title: USPS Request to Add Priority Mail & Parcel Select Contract 3 to Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: June 24, 2020; Filing Authority: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; Public Representative: Kenneth R. Moeller; Comments Due: July 2, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–14068 Filed 6–29–20; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Continuing Disability Report; OMB 3220–0187. Under Section 2 of the Railroad Retirement Act (45 U.S.C. 231a), an annuity is not payable or is reduced for any month in which the annuitant works for a railroad or earns more than prescribed dollar amounts from either non-railroad employment or self-employment. Certain types of work may indicate an annuitant's recovery from disability. The provisions relating to the reduction or non-payment of an annuity by reason of work, and an annuitant's recovery from disability for work, are prescribed in 20 CFR 220.17–220.20. The RRB conducts continuing disability reviews (CDR) to determine whether an annuitant continues to meet the disability requirements of the law. Provisions relating to when and how often the RRB conducts CDR's are prescribed in 20 CFR 220.186.

Form G–254, *Continuing Disability Report,* is used by the RRB to develop information for a CDR determination, including a determination prompted by a report of work, return to railroad service, allegation of medical improvement, or a routine disability review call-up. The RRB proposes no changes to Form G–254.

Form G–254a, Continuing Disability Update Report, is used to help identify a disability annuitant whose work activity and/or recent medical history warrants completion of Form G–254 for a more extensive review. The RRB proposes no changes to Form G–254a.

Form RL–8A, *Occupational Disability Certification,* was used to annually monitor occupational disability annuitants who met certain criteria. The form required annuitants to certify that they are still disabled in order to continue receiving their occupational disability annuities. A CDR may be conducted in any case in which the annuitant does not return a completed and signed RF–8A within 30 days to the RRB. Form RL–8 was used as a cover letter to transmit the Form RL–8A. The 3-member Board has decided our resources no longer allows us to perform CDRs (Continued Disability Reviews) for high-risk cases.

The RRB proposes to remove Form RL–8a from the information collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–254:			
Annuitant	1,000	35	583
Employer verification	100	5	8
Doctor, hospital, or clinic verification	100	5	8
Vocational, Rehabilitation Counselor verification)	100	5	8
Other governmental agency verification	100	5	8
School verification	100	5	8

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

ESTIMATE OF ANNUAL RESPONDENT BURDEN—Continued

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–254a	1,500	5	125
Total	3,000	....	748

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2020–13985 Filed 6–29–20; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89147; File No. SR–NYSE–2019–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Chapter One of the Listed Company Manual To Modify the Provisions Relating to Direct Listings

June 24, 2020.

On December 11, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Chapter One of the Listed Company Manual to modify the provisions relating to direct listings. On December 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 30, 2019.[4] On February 13, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 26, 2020, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] On June 22, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 1.[8]

Section 19(b)(2) of the Act [9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on December 30, 2019.[10] The 180th day after publication of the Notice is June 27, 2020. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2, along with the comments received on the proposal and the Exchange's response. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates August 26, 2020, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–NYSE–2019–67), as modified by Amendment No. 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14012 Filed 6–29–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 87821 (December 20, 2019), 84 FR 72065 (December 30, 2019) (''Notice''). Comments received on the Notice are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2019-67/srnyse201967.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities and Exchange Act Release No. 88190 (February 13, 2020), 85 FR 9891 (February 20, 2020).

[7] *See* Securities and Exchange Act Release No. 88485 (March 26, 2020), 85 FR 18292 (April 1, 2020).

[8] *See* Securities and Exchange Act Release No. 89148 (June 24, 2020).

[9] 15 U.S.C. 78s(b)(2).

[10] *See supra* note 4.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89142; File No. SR–ICC–2020–002]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Management Model Description, ICC Stress Testing Framework, ICC Liquidity Risk Management Framework, ICC Back-Testing Framework, and ICC Risk Parameter Setting and Review Policy

June 24, 2020.

I. Introduction

On January 14, 2020, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ICC's Risk Management Model Description, Stress Testing Framework, Liquidity Risk Management Framework, Back-Testing Framework, and Risk Parameter Setting and Review Policy (together, the ''Risk Policies'') in connection with the clearing of credit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

default index swaptions. The proposed rule change was published for comment in the **Federal Register** on January 31, 2020.[3] On March 13, 2020, the Commission designated a longer period of time for Commission action on the proposed rule change until April 30, 2020.[4] On April 29, 2020, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would amend the Risk Policies in connection with ICC's proposed clearing of credit default index swaptions (''Index Swaptions'').[7] Pursuant to an Index Swaption, one party (the ''Swaption Buyer'') has the right (but not the obligation) to cause the other party (the ''Swaption Seller'') to enter into an index credit default swap transaction at a pre-determined strike price on a specified expiration date on specified terms. In the case of Index Swaptions that would be cleared by ICC, the underlying index credit default swap would be limited to certain CDX and iTraxx Europe index credit default swaps that are accepted for clearing by ICC and would be automatically cleared by ICC upon exercise of the Index Swaption by the Swaption Buyer in accordance with its terms. The Commission has previously approved changes that ICC made to its Rules, End-of-Day Price Discovery Policies and Procedures, and Risk Management Framework related to the clearing of Index Swaptions (the ''Swaption Rule Filing'').[8] As explained in the Swaption Rule Filing, ICC would need to adopt certain related policies and procedures in preparation for the launch of clearing of Index Swaptions, including those set out in this filing, and would not commence clearing of Index Swaptions until such policies and procedures have been approved by the Commission or otherwise become effective.[9]

As discussed above, the proposed rule change would amend the Risk Management Model Description, the Stress Testing Framework, Liquidity Risk Management Framework, Back-Testing Framework, and Risk Parameter Setting and Review Policy.

A. Amendments to the Risk Management Model Description

The proposed rule change would amend ICC's Risk Management Model Description (''RMMD'') to take into account ICC clearing and settling Index Swaptions. Specifically, the proposed rule change would extend to Index Swaptions the existing methodology that ICC uses to determining initial margin and guaranty fund requirements for index and single-name CDS. In addition, the proposed rule change would make typographical corrections and would re-number and update cross-references.

i. Initial Margin

The RMMD provides an overall description of ICC's initial margin methodology describes in detail each component thereof. The proposed rule change would first amend the overall description of ICC's initial margin methodology to add a general definition for Index Swaptions. The proposed rule change would define an Index Swaption as an option instrument that is a specific combination of underlying index, expiration date, strike price, optionality type, exercise style, denomination currency, and transaction type. Moreover, the proposed rule change would specify that for purposes of the initial margin methodology, ICC would treat an Index Swaption as part of the risk sub-factor underlying the index referenced by the Index Swaption.

The proposed rule change would next amend the description of each component of ICC's initial margin methodology to explain how ICC would apply that component to Index Swaptions: Jump-to-default, liquidity charge, concentration charge, interest rate sensitivity, basis risk, spread response, and anti-procyclicality.

Beginning with the jump-to-default requirement, the proposed rule change would specify that ICC would determine an Index Swaption's jump-to-default requirement by adding the Index Swaption's delta equivalent notional amount to the aggregate outright position in index CDS and then determining the jump-to-default requirement for that combined position.

With respect to the liquidity charge, the proposed rule change would add an Index Swaption component to the liquidity charge for the outright index CDS position. The proposed rule change would set out the formulas that ICC would use to calculate an Index Swaption component of the liquidity charge, and the formulas would take into account the direction of the underlying position (bought or sold protection), other option characteristics (such as call or put and the underlying index), bid-offer width scaling factors, and the liquidity charge for the underlying CDS position. ICC would calculate the specific liquidity charge for an Index Swaption position by adding together the instrument level liquidity charges for all Index Swaptions that share the same effective underlying directionality. Finally, ICC's proposed approach for Index Swaptions would not provide portfolio benefits between the Index Swaption position and the outright underlying index position, meaning that ICC would not reduce the liquidity charge to account for offsets between the Index Swaption position and the outright underlying index position.

For the concentration charge, the proposed rule change would set out the formulas that ICC would use to calculate the concentration charge for Index Swaptions. ICC would base the calculation on each Index Swaption's effective notional amount and 5-year equivalent analog. Moreover, the proposed rule change would amend the overall concentration charge analysis to consider Index Swaption positions combined with outright index CDS positions.

For the interest rate sensitivity requirement, the proposed rule change

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the ICC Risk Management Model Description, ICC Stress Testing Framework, ICC Liquidity Risk Management Framework, ICC Back-Testing Framework, and ICC Risk Parameter Setting and Review Policy; Exchange Act Release No. 88047 (Jan. 27, 2020); 85 FR 5756 (Jan. 31, 2020) (SR–ICC–2020–002) (''Notice'').

[4] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period of Time for Commission Action on Proposed Rule Change Relating to the ICC Risk Management Model Description, ICC Stress Testing Framework, ICC Liquidity Risk Management Framework, ICC Back-Testing Framework, and ICC Risk Parameter Setting and Review Policy; Exchange Act Release No. 88379 (Mar. 13, 2020); 85 FR 15829 (Mar. 19, 2020) (SR–ICC–2020–002).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] Self-Regulatory Organizations; ICE Clear Credit LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change Relating to the ICC Risk Management Model Description, ICC Stress Testing Framework, ICC Liquidity Risk Management Framework, ICC Back-Testing Framework, and ICC Risk Parameter Setting and Review Policy; Exchange Act Release No. 88775 (Apr. 29, 2020); 85 FR 26774 (May 5, 2020) (SR–ICC–2020–002).

[7] Index Swaptions are also referred to herein and in the Risk Policies as ''index options'' or ''index CDS options'', or in similar terms.

[8] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the ICC Rules, ICC End-of-Day Price Discovery Policies and Procedures, and ICC Risk Management Framework, Exchange Act Release No. 87297 (Oct. 15, 2019); 84 FR 56270 (Oct. 21, 2019) (SR–ICC–2019–007).

[9] *Id.* at 56270, n. 7.

would extend the existing approach for index CDS to Index Swaptions. The proposed rule change would adjust this approach to account for price changes for Index Swaptions. Overall, ICC would use the interest rate sensitivity requirement to account for the risk associated with changes in the default-free discount interest rate term structure used to price Index Swaption instruments.

With respect to basis risk, the proposed rule change would calculate basis risk requirements for Index Swaptions based on decomposed index positions. Similar to the liquidity charge, the proposed rule change would also specify that Index Swaptions would not be eligible for decomposition benefits in terms of long-short offsets.

For the spread response component of initial margin, the proposed rule change would incorporate an options-implied credit spread distribution. Specifically, ICC would model an implied distribution of credit spread log-returns for each put and call instrument at each given expiry, such that the implied distribution option prices would be as close as possible to the option prices established via the end-of-day process. The proposed rule change would also make amendments to address the determination of expected options payoffs, forward prices and spreads, and shape parameters for swaption instruments with the relevant expiry, for purposes of determining the relevant distribution of implied prices. Finally, the proposed rule change would add formulas to the profit and loss estimates to take into account Index Swaptions.

With respect to the anti-procyclicality aspect of initial margin, currently the RMMD describes how ICC examines instrument price changes observed during the Lehman Brothers default, including consideration of the greatest price decreases between end-of-day prices on September 11, 2008 and any of the next five consecutive trading days. The proposed rule change would extend this period for consideration to the next six consecutive trading days instead of five. The proposed rule change would also make this change for the opposite Lehman Brothers scenario. The proposed rule change would also add formulas to compute the profit and loss for Index Swaptions under these scenarios. Finally, to determine the impact of price change on Index Swaption prices, ICC would re-price the Index Swaptions instruments in the underlying stress scenarios.

ii. Guaranty Fund

The proposed rule change would add Index Swaptions to ICC's calculation of Guaranty Fund requirements. Under the proposed rule change, ICC would combine the Index Swaption profit and loss with the index CDS profit and loss to determine the worst combined profit and loss for both Index Swaptions and Index CDS, and then use that amount to determine Guaranty Fund requirements. The proposed rule change would also add language to explain the assumptions that ICC uses when computing the profit and loss for Index Swaptions.

B. Liquidity Risk Management Framework

The proposed rule change would amend the Liquidity Risk Management Framework to add references to Index Swaptions and to further explain how ICC would consider the liquidity risk associated with Index Swaptions. Specifically, the proposed rule change would amend the Liquidity Risk Management Framework to require that ICC consider extreme but plausible scenarios for Index Swaptions when engaging in stress testing. The proposed rule change would further add language to explain the Index Swaption specific scenarios and how ICC creates them, including the assumptions that ICC uses when creating the scenarios.

C. Risk Parameter Setting and Review Policy

The proposed rule change would revise the Risk Parameter Setting and Review Policy to describe the parameters associated with the liquidity charge, concentration charge, and spread response components for Index Swaptions, as described above. The proposed rule change would also describe the assumptions maintained for purposes of pricing Index Swaptions. Finally, consistent with parameters that ICC uses for single-name and index CDS,[10] the proposed rule change would require that ICC's Risk Management Department review the parameters and assumptions associated with Index Swaptions at least monthly and present any proposed updates to the Risk Working Group.

Currently, the Risk Parameter Setting and Review Policy explains the analyses that ICC performs to explore the sensitivity of the outputs of ICC's risk management model to certain core parameters.[11] The proposed rule change would likewise require that ICC perform sensitivity analysis of estimates used for Index Swaptions. As part of this sensitivity analysis, the proposed rule change would also require that ICC use alternative assumptions and methods for implied distributions and other factors to provide supplementary information to assess on an ongoing basis the validity and quality of assumptions used to price Index Swaptions.

Finally, the proposed rule change would add references to Index Swaptions as appropriate and make clarifying amendments and corrections to the Risk Parameter Setting and Review Policy.

D. Back-Testing Framework

The proposed rule change would amend the Back-Testing Framework to ensure that ICC conducts back-testing with respect to Index Swaptions. The proposed rule change would do so by adding five special strategy portfolios to assess hypothetical positions in Index Swaptions. As with other special strategy portfolios, ICC would use the back-testing results for the special strategy portfolios involving Index Swaptions to identify and assess potential weaknesses in the risk management model with respect to Index Swaptions.

Currently, the Back-Testing Framework requires that ICC Risk report results of back-testing on a univariate basis, meaning per instrument and risk factor, periodically and as appropriate depending on market conditions.[12] The proposed rule change would similarly require that ICC conduct periodic univariate back-testing analysis on Index Swaptions and report the exceedances as an average over all strikes for each time-to-expiry strip.

Currently, the Back-Testing Framework provides guidelines for remediating poor back-testing results.[13] The proposed rule change would likewise set out requirements for remediating poor back-testing results with respect to Index Swaptions. Specifically, under the Back-Testing Framework as amended, if ICC found that poor back-testing results were directly related to Index Swaptions, it would conduct an analysis of the CDS index option implied distribution assumptions, estimation techniques and estimated parameters. The proposed rule change would also require that the

[10] Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Risk Parameter Setting and Review Policy; Exchange Act Release No. 85495 (Apr. 3, 2019); 84 FR 14158 (Apr. 9, 2019) (SR–ICC–2019–002).

[11] *Id.*

[12] Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICE CDS Clearing: Back-Testing Framework; Exchange Act Release No. 85357 (Mar. 19, 2019); 84 FR 11146 (Mar. 25, 2019) (SR–ICC–2019–001).

[13] *Id.*

ICC Risk Management Department review results and statistical assumptions related to Index Swaptions. If the back-testing results based on daily parameter estimates did not exhibit poor performance, the ICC Risk Management Department could immediately update the statistical parameters and increase the frequency of parameter updates. If the daily parameter updates did not remediate poor back-testing results, the ICC Risk Management Department could recalibrate and update certain scaling factors related to Index Swaptions.

E. Stress Testing Framework

ICC uses stress testing to establish if its available financial resources are sufficient to cover hypothetical losses associated with uncollateralized stress losses in extreme but plausible scenarios of the two greatest groups of Clearing Participants that fall under a common parent entity (a ''Clearing Participant Affiliate Group''). The proposed rule change would stress test Index Swaptions by applying each of the defined stress scenario categories to Index Swaptions. The proposed rule change would further explain that for each of the stress scenario categories, ICC would create Index Swaption pricing scenarios by pricing the option instruments using the calibrated implied distribution, at the corresponding underlying stress levels and stress options-implied levels associated with the various pricing scenarios. Moreover, for each of the stress scenario categories the proposed rule change would explain in detail how ICC would apply that category to Index Swaptions. Finally, the proposed rule change would make other conforming changes to incorporate references to Index Swaptions throughout the Stress Testing Framework.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[14] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[15] and Rules 17Ad–22(b)(2), (b)(3), and (d)(8) thereunder.[16]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency, like ICC, be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, to protect investors and the public interest.[17] The Commission believes that the proposed changes to the Risk Policies generally should help to ensure that ICC collects sufficient Initial Margin and Guaranty Fund requirements for clearing Index Swaptions. For example, by amending ICC's Risk Management Model Description to apply ICC's risk management model to Index Swaptions, including Initial Margin and Guaranty Fund requirements, the Commission believes the proposed rule change should help to ensure that ICC collects Initial Margin and Guaranty Fund contributions necessary to manage the risks associated with clearing Index Swaptions. Similarly, by applying the Stress Testing Framework to Index Swaptions, the Commission believes that the proposed rule change should help to ensure that ICC maintains sufficient available financial resources to cover hypothetical losses associated with Index Swaptions for the two greatest Clearing Participant Affiliate Group uncollateralized stress losses in extreme but plausible scenarios.

In addition, by applying the Risk Parameter Setting and Review Policy to Index Swaptions, the Commission believes the proposed rule change should help to ensure that the parameters and assumptions that ICC uses in establishing the Initial Margin and Guaranty Fund requirements associated with Index Swaptions are appropriately reviewed and calibrated. Finally, by applying the Back-Testing Framework to Index Swaptions, the Commission believes the proposed rule change should help to ensure that ICC tests the requirements produced by the risk management model with respect to clearing Index Swaptions and should therefore help to ensure the sound operation of the risk management model with respect to Index Swaptions.

Moreover, the Commission also believes the proposed rule change should help to ensure that ICC maintains adequate liquid resources for clearing Index Swaptions. Specifically, in applying the Liquidity Risk Management Framework to the clearing of Index Swaptions, the Commission believes the proposed rule change should help to ensure that ICC is able to manage the liquidity risk associated with, and has sufficient liquid resources to meet the liquidity demands resulting from, clearing Index Swaptions.

By helping to ensure that ICC collects and maintains sufficient Initial Margin and Guaranty Fund requirements for clearing Index Swaptions, which ICC would use to manage the credit exposures associated with clearing Index Swaptions, the Commission believes that the proposed rule change should help improve ICC's ability to avoid losses that could result from the miscalculation of ICC's credit exposures resulting from clearing Index Swaptions. Similarly, the Commission believes the proposed rule change should help ICC to avoid potential losses that could result from mismanaging the liquidity risks associated with, or having insufficient liquid resources to satisfy the liquidity demands resulting from, clearing Index Swaptions. Because these losses could disrupt ICC's ability to operate, and thus clear and settle securities transactions, the Commission finds the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions. Because such losses could also threaten access to securities and funds in ICC's control, the Commission finds the proposed rule change should help assure the safeguarding of securities and funds that are in the custody or control of ICC or for which it is responsible.

Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICC's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.[18]

B. Consistency With Rule 17Ad–22(b)(2)

Rule 17Ad–22(b)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least

[14] 15 U.S.C. 78s(b)(2)(C).

[15] 15 U.S.C. 78q–2(b)(3)(F).

[16] 17 CFR 240.17Ad–22(b)(2), (b)(3), (d)(8).

[17] 15 U.S.C. 78q–2(b)(3)(F).

[18] 15 U.S.C. 78q–2(b)(3)(F).

monthly.[19] As discussed above, the proposed rule change would amend ICC's Risk Management Model Description to apply ICC's Initial Margin requirements to Index Swaptions, which the Commission believes should help to ensure that ICC uses margin requirements to limit its credit exposures with respect to Index Swaptions. Moreover, in applying the Risk Parameter Setting and Review Policy to Index Swaptions, the proposed rule change would require that ICC's Risk Management Department reviews the parameters and assumptions associated with Index Swaptions at least monthly and present any proposed updates to the Risk Working Group. Therefore, for these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(2).[20]

C. Consistency With Rule 17Ad–22(b)(3)

Rule 17Ad–22(b)(3) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.[21] As discussed above, the proposed rule change would amend ICC's Risk Management Model Description to apply ICC's Guaranty Fund requirements to Index Swaptions, which the Commission believes should help to ensure that ICC maintains sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. Moreover, in applying the Stress Testing Framework to Index Swaptions, the proposed rule change would require that ICC take Index Swaptions into consideration when conducting the stress testing that ICC uses to establish if its available financial resources are sufficient to cover hypothetical losses associated with the two greatest Clearing Participant Affiliate Group uncollateralized stress losses in extreme but plausible scenarios. Therefore, for these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(3).[22]

D. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad–22(d)(8) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act and to promote the effectiveness of ICC's risk management procedures.[23] As discussed above, in applying the Risk Parameter Setting and Review Policy to Index Swaptions, the proposed rule change would require that ICC's Risk Management Department review the parameters and assumptions associated with Index Swaptions at least monthly and present any proposed updates to the Risk Working Group. The Commission believes this should establish a clear and transparent governance arrangement with respect to reviewing and update those parameter and assumptions. Moreover, as discussed above, the proposed rule change would revise the Back-Testing Framework to require that the ICC Risk Management Department review results and statistical assumptions related to Index Swaptions and specify actions to remediate poor results. The Commission believes this should clearly assign responsibility to the ICC Risk Management Department for reviewing and remediating poor results. Therefore, for these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(8).[24]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[25] and Rules 17Ad–22(b)(2), (b)(3), and (d)(8) thereunder.[26]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[27] that the proposed rule change (SR–ICC–2020–002), be, and hereby is, approved.[28]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14009 Filed 6–29–20; 8:45 am]

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[19] 17 CFR 240.17Ad–22(b)(2).

[20] 17 CFR 240.17Ad–22(b)(2).

[21] 17 CFR 240.17Ad–22(b)(3).

[22] 17 CFR 240.17Ad–22(b)(3).

[23] 17 CFR 240.17Ad–22(d)(8).

[24] 17 CFR 240.17Ad–22(d)(8).

[25] 15 U.S.C. 78q–2(b)(3)(F).

[26] 17 CFR 240.17Ad–22(b)(2), (b)(3), (d)(8).

[27] 15 U.S.C. 78s(b)(2).

[28] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89140; File No. SR–MEMX–2020–01]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Compliance Rules Regarding the National Market System Plan Governing the Consolidated Audit Trail

June 24, 2020

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 June 23, 2020, MEMX LLC (''MEMX'' or ''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

MEMX LLC (''MEMX'' or the ''Exchange'') is filing with the Commission a proposed rule change to to amend Exchange Rules 4.5–4.16, the Exchange's compliance rules (collectively, ''Compliance Rules'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')[3] to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. The text of the proposed ruel change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rules.

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 change is to amend Rules 4.5–4.16, the Compliance Rules regarding the CAT NMS Plan, to be consistent with certain exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. As described more fully below, the proposed rule change would make the following changes to the Compliance Rules:

- Add additional data elements to the consolidated audit trail (''CAT'') reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from alternative trading systems (''ATSs'') that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' (collectively, referred to as ''SSNs'') or account numbers; and
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT.

i. CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' [4] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rules to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. With the addition of these OATS data elements to the CAT, the CAT will have the data elements necessary to retire OATS.

A. Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members [5] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the Compliance Rules to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.'' [6] The Compliance Rules do not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(vii) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rules do not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 4.7 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rules do not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rules do not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, if the order is modified or

[4] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[5] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[6] FINRA Rule 5320 prohibits trading ahead of customer orders.

cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

B. Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[7] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rules the reporting requirements for ATSs in FINRA Rule 4554,[8] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) of Rule 4.5 to facilitate the addition to the CAT of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rules do not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rules: Paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of Rule 4.7.

Proposed paragraph (a)(1)(A)(xi)(1) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(1) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(1) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, as with the requirements in FINRA Rule 4554(b)(5), proposed paragraph (a)(2)(D) of Rule 4.7 would state that:

> An Industry Member that operates an ATS must provide to the Central Repository: (1) a list of all of its order types twenty (20) days before such order types become effective; and (2) any changes to its order types twenty (20) days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) National Best Bid and Offer

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> (6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and
>
> (7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

> (1) The NBBO (or relevant reference price) in effect at the time of order execution;
>
> (2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and
>
> (3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rules do not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rules: (a)(1)(A)(xi)(2)–(3), (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 4.7.

Specifically, proposed paragraph (a)(1)(A)(xi)(2)–(3) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

> (2) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);
>
> (3) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(2). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

[7] *See* FINRA *Regulatory Notice* 16–28 (August 2016).

[8] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up-to-date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

Similarly, proposed paragraphs (a)(1)(C)(x)(2)–(3), (a)(1)(D)(ix)(2)–(3) and (a)(1)(E)(viii)(1)–(2) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rules do not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add proposed paragraph (a)(1)(A)(xi)(4) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add proposed paragraph (a)(1)(B)(viii) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add proposed paragraph (a)(1)(C)(x)(4) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add proposed paragraph (a)(1)(D)(ix)(4) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add proposed paragraph (a)(1)(E)(viii)(3) to Rule 4.7, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(5) to Rule 4.7. Specifically, proposed new paragraph (a)(1)(D)(ix)(5) of Rule 4.7 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed paragraph (a)(1)(D)(ix)(5) of Rule 4.7 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

> Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rules do not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into proposed paragraphs (a)(1)(A)(xi)(5) and (a)(1)(C)(x)(5) of Rule 4.7. Specifically, proposed paragraph (a)(1)(A)(xi)(5) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order, whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed paragraph (a)(1)(C)(x)(5) of Rule 4.7 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

C. Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Compliance Rules do not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(viii) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add paragraph (a)(1)(C)(ix) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rules do not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(D)(viii) to Rule 4.7, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

D. Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rules do not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(ix) to Rule 4.7, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rules do not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add paragraph (a)(1)(C)(viii) to Rule 4.7, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

E. Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rules do not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(x) to Rule 4.7, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

ii. OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) Bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rules to include these data elements.

A. Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[9] Accordingly, the Exchange proposes to add paragraph (f)(1) to Rule 4.7 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed paragraph (f)(1) of Rule 4.7 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

B. Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add paragraph (f)(2) to Rule 4.7 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed paragraph (f)(2) of Rule 4.7 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

C. Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add paragraph (f)(3) to Rule 4.7, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.''

iii. Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting'').[10] Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rules, to require its Industry Members other than Small Industry Members (''Large Industry Members'') to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rules, to require its Small Industry Members[11] to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.'' On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.[12]

[9] Section 6.5(a)(ii) of the CAT NMS Plan.

[10] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[11] *See* Section 1.1 of the CAT NMS Plan.

[12] *See* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC's exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rules by requiring:

(1) Its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (''Small Industry OATS Reporters'') to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by July 20, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines described in Section F below through its Compliance Rules by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rules to be consistent with the exemptive relief to implement Phased Reporting as described below.

A. Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by June 22, 2020.[13] To implement the Phased Reporting for Phase 2a, the Exchange proposes to add paragraph (t)(1) of Rule 4.5 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as paragraph (t)(1) of Rule 4.5. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2a.[14]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''*IDQS*''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 4.7. Paragraph (a)(1)(A)(i) of Rule 4.7 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 4.7 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark

exemptive relief, Industry Members who elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

[13] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members and Small Industry OATS Reporters begin reporting.

[14] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d, as discussed below.

such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 4.7, Industry Members would be required to provide a timestamp pursuant to Rule 4.10. Rule 4.10(b)(i) states that

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[15]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[16] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(A) of Rule 4.16, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, 2020.''

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 4.16 with new paragraphs (c)(2)(A) and (B) of Rule 4.16. Proposed paragraph (c)(2)(A) of Rule 4.16 would state that

> Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by June 22, 2020.

Proposed paragraph (c)(2)(B) of Rule 4.16 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

B. Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by July 20, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add paragraph (t)(2) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as paragraph (t)(2) to Rule 4.5. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2b.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[17] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or

[15] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[16] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

[17] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below in Section A.4.

execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(B) of Rule 4.16, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by July 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(C) of Rule 4.16, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

C. Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is approximately seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add paragraph (t)(3) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as paragraph (t)(3) to Rule 4.5. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.'' Phase 2c Industry Member Data'' would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. While the following summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers [18] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [19] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[20]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted

[18] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[19] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. Note that the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 4.5 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 4.5 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[20] In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(C) of Rule 4.16, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2c for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(C) of Rule 4.16, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

D. Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add paragraph (t)(4) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as paragraph (t)(4) to Rule 4.5. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2d.'' [21]

''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; [22] (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: A listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT

[21] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[22] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 4.5 to replace the references to November 15, 2018 and 2019 with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2)–(5) of Rule 4.5 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 4.16 with new paragraph (c)(1)(D) of Rule 4.16, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(C) of Rule 4.16, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

E. Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add paragraph (t)(5) to Rule 4.5 and amend paragraphs (c)(1) and (2) of Rule 4.16.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as paragraph (t)(5) of Rule 4.5. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2e. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 4.5.[23] The Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2e.

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 4.16, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 4.10 with new paragraph (c)(1)(E) of Rule 4.16, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 4.16, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 4.16 with new paragraph (c)(2)(D) of Rule 4.16, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

F. Industry Member Testing Requirements

Rule 4.13(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 4.13(a) with the testing milestones set forth in the exemptive relief. Specifically, the Exchange proposes to replace Rule 4.13(a) with the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.

(3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

iv. Granularity of Timestamps

On February 3, 2020, the Participants filed with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rules, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository.[24] On April 8, 2020, the

[23] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and SSNs. *See* Rule 4.5. The Participants have received exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See* also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). Given the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

[24] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

Participants received the exemptive relief.[25] As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, the Exchange proposes to amend its Compliance Rules to reflect the exemptive relief. Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 4.10. Rule 4.10(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision to read as follows to reflect the exemptive relief:

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds; provided, that Industry Members that capture timestamps in increments more granular than nanoseconds must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down, until April 8, 2025.

v. Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization (''Introducing Industry Member'') from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members (''Large Industry Members'').[26] Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.[27]

As a result, the Exchange proposes to amend its Compliance Rules to adopt a definition of ''Introducing Industry Member'' and to revise Rule 4.16 to require Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, the Exchange proposes to define ''Introducing Industry Member'' in proposed paragraph (v) to Rule 4.5, as ''a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0–10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.'' The Exchange also proposes to add a new paragraph (3) to Rule 4.16(c) to state that ''Introducing Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.'' With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

vi. CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.[28] The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.[29] Assuming the Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs, dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (''CCID'') without requiring Industry Members to report SSNs to the CAT (the ''CCID Alternative''). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the ''transformed value''). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (''CCID Subsystem''). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants' regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value, and report the transformed value to the CAT.

[25] *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[26] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members (Feb. 3, 2020).

[27] *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

[28] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[29] *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (''PII Exemption Order''). The PII Exemption Order lists several conditions that must be met by the Exchange. If the Exchange does not satisfy the conditions, the PII Exemption Order would not apply to the Exchange.

The Participants also requested exemptive relief to allow for an alternative approach which would exempt the reporting of dates of birth and account numbers [30] to the CAT (''Modified PII Approach''), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, the Exchange proposes to amend its Compliance Rules to reflect the exemptive relief. Rule 4.7(a)(2)(C) states that

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 4.7(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 4.8, Customer Account Information and Customer Identifying Information for the relevant Customer.

Similarly, Rule 4.8 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 4.5(m) defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth'' and ''individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' Accordingly, the Exchange proposes to replace ''date of birth'' in the definition of ''Customer Identifying Information'' in Rule 4.5(m) (now renumbered Rule 4.5(n)) with ''year of birth'' and to delete ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from Rule 4.5(m) (now renumbered Rule 4.5(n)). In addition, currently, Rule 4.5(l) defines ''Customer Account Information'' to include account numbers. The Exchange proposes to delete ''account number'' from the definition of ''Customer Account Information'' in Rule 4.5(l) (now renumbered Rule 4.5(m)).

The Exchange also proposes to add a definition of the term ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to Rule 4.5. Specifically, the Exchange proposes to add paragraph (pp) to Rule 4.5 to define ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to mean ''the interim value created by an Industry Member based on a Customer ITIN/SSN.''

The Exchange proposes to revise Rule 4.7(a)(2)(C) to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''). Specifically, the Exchange proposes to revise Rule 4.7(a)(2)(C) to state:

> [s]ubject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 4.7(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), and in accordance with Rule 4.8, Customer Account Information and Customer Identifying Information for the relevant Customer.

The Exchange also proposes to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') in the Customer information reporting required under Rule 4.8. Specifically, the Exchange proposes to revise Rule 4.8(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 4.13. The Exchange also proposes to revise Rule 4.8(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account on a daily basis. In addition, the Exchange proposes to revise Rule 4.8(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account. The Exchange also proposes to revise Rule 4.8(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Paragraph (1)(B) of Rule 4.5(m), the definition of ''Customer Account Information'' states that ''in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will'' . . . ''provide the relationship identifier in lieu of the ''account number.'' As an account number will no longer be an element in ''Customer Account Information,'' the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, the Exchange proposes to delete the requirement set forth in Rule 4.5(m)(a)(B) regarding relationship identifiers from Rule 4.5(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 4.7(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') and the year of birth to the Central Repository.[31]

vii. FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an

[30] With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

[31] The Exchange anticipates that the Compliance Rules may be further amended when further details regarding the CCID Alternative are finalized.

alternative approach to the reporting of clearing numbers and cancelled trade indicators.[32] The SEC provided this exemptive relief on June 11, 2020.[33] FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator, subject to certain conditions.

As a condition to this exemption, the Participants would continue to require Industry Members to submit a trade report for a trade, and, if the trade is cancelled, a cancellation, to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, Industry Members would be required to report to the Central Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, the Exchange proposes to amend its Compliance Rules to reflect the exemptive relief to implement this alternative approach. Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add new paragraph (a)(2)(E) to Rule 4.7, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade, and, if the trade is cancelled, a cancellation, to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution and/or cancellation to the Central Repository:

(1) The Industry Member is required to report to the Central Repository trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 4.7(a)(1)(E) or cancellation of an order pursuant to Rule 4.7(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rules 4.7(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, the Exchange proposes new paragraphs (a)(2)(E)(2) and (3) to Rule 4.7, which would state:

(2) If the order is executed in whole or in part, and the Industry Member submits the trade report to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 4.7(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 4.7(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(3) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 4.7(a)(2)(B); provided, however, if the Industry Member does not report a cancellation for a canceled trade to such FINRA facility, or does not report the unique trade identifier as required by 4.7(a)(2)(E)(1), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[34] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[35] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

The Exchange believes that this proposal is consistent with the Act because it is consistent with certain exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the

[32] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (June 5, 2020).

[33] *See* Securities Exchange Act Release No. 89051 (June 11, 2020) (**Federal Register** publication pending).

[34] 15 U.S.C. 78f(b)(6).

[35] 15 U.S.C. 78f(b)(8)

Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [36] To the extent that this proposal implements the Plan, including the exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with certain exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on 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

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 [37] and subparagraph (f)(6) of Rule 19b–4 thereunder.[38]

A proposed rule change filed under Rule 19b–4(f)(6) [39] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[40] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS Plan granted by the Commission and facilitates the start of Industry Member reporting. In addition, as noted by the Exchange, the proposed rule change is based on a filing recently approved by the Commission.[41] Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2020–01 and should be submitted on or before July 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14007 Filed 6–29–20; 8:45 am]

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[36] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[37] 15 U.S.C. 78s(b)(3)(A)(iii).

[38] 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 the 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.

[39] 17 CFR 240.19b–4(f)(6).

[40] 17 CFR 240.19b–4(f)(6)(iii).

[41] *See* Securities Exchange Act Release No. 89108 (June 19, 2020).

[42] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89145; File No. SR–NSCC–2020–003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV

June 24, 2020.

I. Introduction

On March 16, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2020–003 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on March 31, 2020.[3] The Commission has received comment letters on the Proposed Rule Change.[4] On May 21, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

As described in the Notice,[8] NSCC proposes to (1) revise the definition of Illiquid Security, (2) apply a haircut-based volatility charge specifically applicable to Illiquid Securities and unit investment trusts (''UITs''), (3) eliminate the current Illiquid Charge, and (4) make other confirming changes.

A. Proposed Definition of Illiquid Security

NSCC's proposed definition of an Illiquid Security includes three categories of securities. The first category of the proposed definition of an Illiquid Security would include any security that is not listed on a specified securities exchange. For purposes of this definition, NSCC's Rules would define a ''specified securities exchange'' as a national securities exchange that has established listing services and is covered by industry pricing and data vendors. The second category of the proposed definition of an Illiquid Security would include any security that (1) is listed on a specified securities exchange, (2) either (i) has a market capitalization that is considered by NSCC to be a micro-capitalization as of the last business day or the prior month, or (ii) is an American depositary receipt, and (3) the median of its calculated illiquidity ratio of the prior six months exceeds certain threshold that would be determined by NSCC pursuant to certain criteria. The third category of the proposed definition of an Illiquid Security would include any security that is listed on a specified securities exchange and, as determined by NSCC on a monthly basis, has fewer than 31 business days of trading history over the past 153 business days on such exchange.

B. Proposed Haircut-Based Volatility Charge Specifically Applicable to Illiquid Securities and UITs

First, NSCC proposes to expressly exclude Illiquid Securities from calculating the volatility component of a Required Fund Deposit using a parametric Value at Risk (''VaR'') model and instead apply a haircut-based volatility charge specifically to Illiquid Securities. To determine the appropriate volatility charge, NSCC would group Illiquid Securities by price level. The haircut percentage applicable to each group of Illiquid Securities would be determined at least annually. The haircut percentage would be the highest of the following percentages: (1) 10%, (2) a percent benchmarked to be sufficient to cover the 99.5th percentile of the historical 3-day return of each group of Illiquid Securities in each Member's portfolio, and (3) a percent benchmarked to be sufficient to cover the 99th percentile of the historical 3-day return of each group in each Member's portfolio after incorporating a fixed transaction cost equal to one-half of the estimated bid-ask spread. The look-back period for purposes of calibrating the applicable percentage would be no less than five years.

Second, NSCC proposes to expressly exclude UITs from calculating the volatility component of the Required Fund Deposit using a VaR model, and instead apply a haircut-based volatility charge specifically applicable to UITs. NSCC would review the haircut percentage used in this calculation at least annually. The haircut percentage applicable to UITs would be the highest of (1) 2%, and (2) the 99.5th percentile of the historical 3-day returns for the group of UITs within each Member's portfolio using a look-back period of no less than 5 years.

C. Proposed Elimination of the Illiquid Charge

NSCC proposes to eliminate the existing Illiquid Charge (and the corresponding definition of Illiquid Position), which may be imposed as an additional charge in the volatility component of a Required Fund Deposit that is applied to Illiquid Securities as securities that are less amenable to statistical analysis.

D. Proposed Conforming Changes

NSCC proposes to make two conforming changes to harmonize the Rules in light of the proposed amendments discussed above. First, the proposal would exclude municipal and corporate bonds that are less amenable to statistical analysis or amenable to statistical analysis only in a complex manner from the VaR Charge. Second, NSCC proposes to revise the Rules to clarify its current practice (*i.e.,* that only long positions in Family-Issued Securities are excluded from the VaR Charge), and that short positions in Family-Issued Securities would be subject to the haircut-based volatility

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 88474 (March 25, 2020), 85 FR 17910 (March 31, 2020) (SR–NSCC–2020–003) (''Notice''). NSCC also filed the proposal contained in the Proposed Rule Change as advance notice SR–FICC–2020–802 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on April 15, 2020. Securities Exchange Act Release No. 88615 (April 9, 2020), 85 FR 21037 (April 15, 2020) (SR–NSCC–2020–802). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Letter from Christopher R. Doubek, CEO, Alpine Securities Corporation (April 21, 2020); Letter from John Busacca, Founder, Securities Industry Professional Association (April 23, 2020); Letter from Charles F. Lek, Lek Securities Corporation (April 30, 2020); Letter from James C. Snow, President/CCO, Wilson-Davis & Co., Inc., all available at *https://www.sec.gov/comments/sr-nscc-2020-003/srnscc2020003.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 88885 (May 15, 2020), 85 FR 31007 (May 21, 2020) (SR–NSCC–2020–003).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The description of the Proposed Rule Change is based on the statements prepared by NSCC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in NSCC's Rules & Procedures, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

charge because they would meet the proposed definition of Illiquid Securities.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [9] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[10] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[11] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[12] which requires, among other things, that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest; and
- Rule 17Ad–22(e)(4)(i) under the Act,[13] which requires a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.
- Rule 17Ad–22(e)(23)(ii) under the Act,[14] which requires a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[15] Rule 17Ad–22(e)(4)(i) under the Act,[16] Rule 17Ad–22(e)(23)(ii) under the Act,[17] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4(g) under the Act,[18] any request for an opportunity to make an oral presentation.[19]

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by July 21, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 4, 2020.

The Commission asks that commenters address the sufficiency of NSCC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[20] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2020–003 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–NSCC–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2020–003 and should be submitted on or before July 21, 2020. Rebuttal comments should be submitted by August 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14010 Filed 6–29–20; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(2)(B).

[10] *Id.*

[11] 15 U.S.C. 78q–1.

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(4)(i).

[14] 17 CFR 240.17Ad–22(e)(23)(ii).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 240.17Ad–22(e)(4)(i).

[17] 17 CFR 240.17Ad–23(e)(23)(ii).

[18] 17 CFR 240.19b–4(g).

[19] Section 19(b)(2) of the Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[20] *See* Notice, *supra* note 3.

[21] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89148; File No. SR–NYSE–2019–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2, To Amend Chapter One of the Listed Company Manual To Modify the Provisions Relating to Direct Listings

June 24, 2020.

On December 11, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Chapter One of the Listed Company Manual to modify the provisions relating to direct listings. On December 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 30, 2019.[4] On February 13, 2020, pursuant to Section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 26, 2020, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] On June 22, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 1, and is described in Items I and II below, which Items have been prepared by the Exchange. On June 24, 2020, the Commission extended the time period for approving or disapproving the proposal for an additional 60 days.[8] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 87821 (December 20, 2019), 84 FR 72065 (December 30, 2019) (''Notice''). Comments received on the Notice are available on the Commission's website at: *https://www.sec.gov/comments/sr-nyse-2019-67/srnyse201967.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities and Exchange Act Release No. 88190 (February 13, 2020), 85 FR 9891 (February 20, 2020).

[7] *See* Securities and Exchange Act Release No. 88485 (March 26, 2020), 85 FR 18292 (April 1, 2020).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) amend Chapter One of the Listed Company Manual (the ''Manual'') to modify the provisions relating to direct listings to permit a primary offering in connection with a direct listing and to specify how a direct listing qualifies for initial listing if it includes both sales of securities by the company and possible sales by selling shareholders, (2) modify the definition of ''Direct Listing'' in Rule 1.1, (3) add a definition of Issuer Direct Offering (''IDO'') Order to Rule 7.31 and describe how it would participate in a Direct Listing Auction in Rule 7.35A, and (4) remove references to Direct Listing Auctions from Rule 7.35C.[9] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[8] *See* Securities and Exchange Act Release No. 89147 (June 24, 2020).

[9] The Exchange has previously filed a proposed rule change to amend Chapter One of the Manual to modify the provisions related to direct listings. *See* SR–NYSE–2019–67 and Amendment No. 1 to that filing. Amendment No. 2 to SR–NYSE–2019–67 proposes to (1) delete from the filing the proposed amendment to Section 102.01A proposing to provide additional time under certain circumstances for companies listing in connection with a direct listing to meet the initial listing distribution standards and add provisions specifying how a direct listing qualifies for listing if it includes both sales of securities by the company and possible sales by selling shareholders, (2) amend Exchange Rules to add the IDO Order and describe how it would participate in a Direct Listing Auction for a Primary Direct Floor Listing and remove references to Direct Listing Auctions from Rule 7.35C. This Amendment No.2 to SR–NYSE–2019–67 replaces Amendment No. 1 to SR–NYSE–2019–67 as originally filed and supersedes such filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend (1) Chapter One of the Manual to modify the provisions relating to direct listings to permit a primary offering in connection with a direct listing and to specify how a direct listing qualifies for initial listing if it includes both sales of securities by the company and possible sales by selling shareholders, (2) Rule 1.1 (Definitions) to modify the definition of ''Direct Listing,'' (3) Rules 7.31 (Orders and Modifiers) and 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) to add a definition of Issuer Direct Offering (''IDO'') Order and describe how it would participate in a Direct Listing Auction, and (4) remove references to Direct Listing Auctions in Rule 7.35C.[10]

Amendments to the Manual

Section 102.01B of the Manual includes initial listing requirements for a company that has not previously had its common equity securities registered under the Act, to list its common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares (a ''Selling Shareholder Direct Floor Listing'').[11] To allow a company to sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering, the Exchange proposes to amend Section 102.01B. The proposed change would allow a company that has not previously had its common equity securities registered under the Act, to list its common equity securities on the Exchange at the time of effectiveness of a registration statement pursuant to which the company itself will sell

[10] Trading in all securities on the Exchange, including any Direct Listing Auctions, is subject to the Pillar trading rules. The term ''Direct Listing Auction'' is defined in Rule 7.35(a)(1)(E) to mean a Core Open Auction for the first day of trading on the Exchange of a security that is a Direct Listing. The term ''Core Open Auction'' is defined in Rule 7.35(a)(1)(A) to mean the Auction that opens trading at the beginning of the Core Trading Session, and for Exchange-listed securities, the term ''Core Trading Session'' is defined in Rule 7.34(a)(2)(B) to begin for each security with the Core Open Auction, which can take place during Core Trading Hours only, which, pursuant to Rule 1.1, begins at 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time.

[11] Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (SR–NYSE–2017–30).

shares in the opening auction on the first day of trading on the Exchange (any such listing in which either (i) only the company itself is selling shares in the opening auction on the first day of trading or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction, is referred to herein as a ''Primary Direct Floor Listing'').

In considering the initial listing of a company in connection with a Selling Shareholder Direct Floor Listing, Section 102.01B currently provides that the Exchange will determine that such company has met the applicable $100 million aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation of the company (a ''Valuation'') and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a ''Private Placement Market'').[12] The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market. Alternatively, in the absence of any recent trading in a Private Placement Market, Section 102.01B provides that the Exchange will determine that such company has met its market value of publicly-held shares requirement if the company provides a Valuation evidencing a market value of publicly-held shares of at least $250 million.

In applying this requirement to a Primary Direct Floor Listing, the Exchange is proposing the following:

- A company would qualify for listing in connection with a Primary Direct Floor Listing if it will sell at least $100 million in market value of shares in the opening auction.
- If a company will sell less than $100 million in market value of shares in the opening auction, a company would qualify for listing in connection with a Primary Direct Floor Listing if the aggregate of the market value of publicly-held shares immediately prior to listing together with the market value of shares the 4company will sell in the opening auction totals at least $250 million with such market value calculated using a price per share equal to the lowest price of the price range established by the issuer in its registration statement.[13]

Officers, directors or owners of more than 10% of the company's common stock prior to the opening auction may purchase shares sold by the company in the opening auction, provided that such purchases are not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. In addition, in the same way as for shares of a company listing following a traditional underwritten IPO, such an insider owner may purchase shares sold by other shareholders or sell its own shares in the opening auction and in trading after the opening auction, to the extent not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. Except as proposed for Primary Direct Floor Listings, shares held by these types of inside investors are not included in calculations of publicly-held shares for purposes of Exchange listing rules.[14] The Exchange notes that such investors may acquire in secondary market trades shares sold by the issuer in a Primary Direct Floor Listing that were included when calculating whether the issuer meets the market value of publicly-held shares initial listing requirement. However, the Exchange believes that because of the enhanced publicly-held shares requirement for a listing in conjunction with a Primary Direct Floor Listing, which is much higher than the Exchange's minimum $40 million requirement for a traditional underwritten IPO, and the neutral nature of the opening auction process, companies using a Primary Direct Floor Listing would have an adequate public float and liquid trading market after the completion of the opening auction.

Any company listing in connection with a Primary Direct Floor Listing or a Selling Shareholder Direct Floor Listing would continue to be subject to and meet all other applicable initial listing requirements, including the requirements of Section 102.01A to have 400 shareholders of round lots and 1.1 million publicly-held shares outstanding at the time of initial listing, and the requirement of Section 102.01B to have a price per share of at least $4.00 at the time of initial listing.

In defining a Selling Shareholder Direct Listing in the proposed amended rule text, the Exchange proposes to include additional text specifying that the term Selling Shareholder Direct Listing is only used for listings where the company is listing without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements. This proposed added text is intended to clarify the application of the existing rule and does not substantively change it.

Amendments to Exchange Rules

Amendment to Definition of ''Direct Listing''

Rule 1.1(f) currently defines the term ''Direct Listing'' to mean a security that is listed under Footnote (E) to Section 102.01B of the Manual, which currently only permits a company to list its common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares (*i.e.,* a Selling Shareholder Direct Floor Listing). Because, as described above, the Exchange proposes to amend this Section of the Manual to describe both a Primary Direct Floor Listing and a Selling Shareholder Direct Floor Listing, the Exchange proposes to similarly amend Rule 1.1(f) to specify that a Direct Listing can be either a ''Selling

[12] Section 102.01B currently provides (and the Exchange does not propose to amend that provision) that any Valuation used for this purpose in connection with a Selling Shareholder Direct Floor Listing must be provided by an entity that has significant experience and demonstrable competence in the provision of such valuations. The Valuation must be of a recent date as of the time of the approval of the company for listing and the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement. The Exchange will consider any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation and will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing. In particular, the Exchange will examine the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing and will only rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the Exchange's market value requirement. The Exchange may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value.

[13] For example, if the company is selling five million shares in the opening auction and there are 45 million shares issued and outstanding immediately prior to the listing that are eligible for inclusion as publicly-held shares based on disclosure in the company's registration statement, then the market value of publicly-held shares will be calculated based on a combined total of 50 million shares. If the lowest price of the price range disclosed in the company's registration statement is $10 per share, the Exchange will attribute to the company a market value of publicly-held shares of $500 million.

[14] Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares under NYSE listing standards.

Shareholder Direct Floor Listing'' or a ''Primary Direct Floor Listing.''

Amendment to Rules 7.31, 7.35A, and 7.35C

The Exchange proposes to amend Rules 7.31 and 7.35A to add a new order type and describe how that new order type would participate in a Direct Listing Auction if a company chooses to list its common equity securities on the Exchange pursuant to a Primary Direct Floor Listing.

Currently, under Rule 7.35A, a Direct Listing Auction operates similarly to an IPO Auction, including that the Exchange does not disseminate Auction Imbalance Information [15] and a Designated Market Maker (''DMM'') may not effect the auction electronically.[16] In addition, Rule 7.35A establishes how to determine the Indication Reference Price for a security that is a Direct Listing [17] and a requirement for the DMM facilitating the opening on the first day of trading of a Direct Listing.[18]

Because a company would be offering shares in a Primary Direct Floor Listing, the Exchange proposes to modify the procedures for a Direct Listing Auction that would be used for a Primary Direct Floor Listing. These procedures would be applicable to any Primary Direct Floor Listing, as defined in Section 102.01B of the Manual. As proposed, to sell its shares in such an Auction, a company would use a proposed new order type, the IDO Order. As further proposed, a Primary Direct Floor Listing could be effected only if (i) the Auction Price would be within the price range specified by the company in its effective registration statement, and (ii) the full quantity of the IDO Order, *i.e.,* the shares that the company seeks to sell in the Primary Direct Floor Listing, can be sold within that price range. In addition, all better-priced sell orders would need to be satisfied in such Auction as required by Rule 7.35A(g), and the shares being sold by the company would have priority over at-priced orders.[19] Consistent with current rules, a Direct Listing Auction for a Primary Direct Floor Listing must be effected manually by the DMM, and, as provided for in Rule 7.35A(g), the DMM would be responsible for determining an Auction Price, provided that such price must be within the price range specified in the effective registration statement.

To effect these changes, the Exchange proposes to amend Rule 7.31(c)(1) to add new subparagraph (D) to describe the Issuer Direct Offering Order, which would also be referred to as an ''IDO Order.'' [20] As proposed, an IDO Order would be a Limit Order to sell that is to be traded only in a Direct Listing Auction for a Primary Direct Floor Listing. The Exchange also proposes that:

- Only one IDO Order may be entered on behalf of the issuer and only one member organization may enter an IDO Order on behalf of an issuer (proposed Rule 7.31(c)(1)(D)(i)); [21]
- the limit price of the IDO Order must be equal to the lowest price of the price range established by the issuer in its effective registration statement (''Primary Direct Floor Listing Auction Price Range'') (proposed Rule 7.31(c)(1)(D)(ii));
- the IDO Order must be for the quantity of shares offered by the issuer, as disclosed in the prospectus in the effective registration statement (proposed Rule 7.31(c)(1)(D)(iii));
- an IDO Order may not be cancelled or modified (proposed Rule 7.31(c)(1)(D)(iv)); and
- an IDO Order must be executed in full in the Direct Listing Auction (proposed Rule 7.31(c)(1)(D)(v)).

Next, the Exchange proposes to amend Rule 7.35A to establish additional requirements for a DMM conducting a Direct Listing Auction for a Primary Direct Floor Listing.

First, the Exchange proposes that the Indication Reference Price applicable to a security that is a Primary Direct Floor Listing would be the lowest price of the price range established by the issuer in its effective registration statement. In a Primary Direct Floor Listing, a company would be issuing new shares and would be required to establish a price range for such securities in its effective registration statement. Because the Exchange proposes that a Primary Direct Floor Listing could not open below the lowest price of such price range, the Exchange proposes that the Indication Reference Price for such security would be the lowest price of that price range.[22] To effect this change, the Exchange proposes to amend Rule 7.35A(d)(2)(A) to add new subparagraph (v) that would provide that, for a security that is a Primary Direct Floor Listing, the Indication Reference Price would be the lowest price of the Primary Direct Floor Listing Auction Price Range.

Second, the Exchange proposes to amend Rule 7.35A(g) regarding the Auction Price that the DMM is responsible for determining. As noted above, the Exchange proposes that a Primary Direct Floor listing must open at a price within the Primary Direct Floor Listing Auction Price Range, as set forth in the effective registration statement issued by the company. In addition, the Exchange proposes that such Auction would be conducted only if the IDO Order and all better-priced sell orders can be satisfied at such price. To effect such changes, proposed Rule 7.35A(g)(2) would provide that a DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing if:

- The Auction Price would be below the lowest price or above the highest price of the Primary Direct Floor Listing Auction Price Range (proposed Rule 7.35A(g)(2)(A)); [23] or
- there is insufficient buy interest to satisfy both the IDO Order and all better-priced sell orders in full (proposed Rule 7.35A(g)(2)(B)).

Because the DMM is responsible for determining the Auction Price, these proposed rule changes would make the DMM responsible for determining

[15] *See* Rule 7.35(c)(3).

[16] *See* Rule 7.35A(c)(1)(C).

[17] *See* Rule 7.35A(d)(2)(A)(iv). Under Rule 7.35A(d), the Indication Reference Price is used by the DMM to determine whether a pre-opening indication would be required under that Rule. Currently, for a security that is a Direct Listing that has had recent sustained trading in a Private Placement Market prior to listing, the Indication Reference Price is most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.

[18] *See* Rule 7.35A(g)(1). Under Rule 7.35A(g), in addition to the DMM's responsibility for determining the Auction Price for Core Open Auction and selecting an Auction Price at which all better-priced orders on the side of any imbalance can be satisfied, a DMM facilitating the opening on the first day of trading of a Direct Listing that has not had recent sustained history of trading in a Private Placement prior to listing, is required to consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.

[19] Pursuant to Rule 7.35(a)(5), the Auction Price is the price at which an Auction is conducted. A sell order is ''better-priced'' if it is priced lower than the Auction Price, and includes all sell Market Orders and Market-on-Open (''MOO'') Orders. *See* Rule 7.35(a)(5)(A). A sell order is ''at-priced'' if it is priced equal to the Auction Price. *See* Rule 7.35(a)(5)(B).

[20] The IDO Order would be an Auction-Only Order. An Auction-Only Order is a Limit or Market Order that is to be traded only in an auction pursuant to the Rule 7.35 Series (for Auction-Eligible Securities) or routed pursuant to Rule 7.34 (for UTP Securities). *See* Rule 7.31(c). Rule 7.31(c)(1) specifies the Auction-Only Orders that are available for a Core Open Auction or Trading Halt Auction.

[21] Because an IDO Order would not be entered by the DMM, the Exchange proposes to amend the last sentence Rule 7.31(c) to add the IDO Order to the list of order types not available to the DMM. The amended sentence would provide (new text italicized): ''MOO, MOC, LOC, *IDO,* and Closing IO Orders are not available to DMMs.''

[22] For example, if the Primary Direct Floor Listing Auction Price Range is $10.00 to $20.00, the Indication Reference Price would be $10.00.

[23] For example, if the Primary Direct Floor Listing Auction Price Range is $10.00 to $20.00, the Direct Listing Auction would not be conducted at a price below $10.00 or above $20.00.

whether the Direct Listing Auction can proceed. If there is insufficient buy interest and the DMM cannot price the Auction and satisfy the IDO Order as required by this proposed rule, the Direct Listing Auction would not proceed and such security would not begin trading. If a Direct Listing Auction cannot be conducted, the Exchange would notify market participants via Trader Update that the Primary Direct Floor Listing has been cancelled and any orders for that security that have been entered on the Exchange, including the IDO Order, would be cancelled back to the entering firms.

Third, the Exchange proposes that when the limit price of the IDO Order (which is already required to be at the lowest price in Primary Direct Floor Listing Price Range) is equal to the Auction Price, *i.e.,* an at-priced IDO Order, the IDO Order would have priority over other orders at that price. As noted above, under Rule 7.35A(g), all better-priced interest is guaranteed to participate in the opening auction for a Primary Direct Floor Listing. If the IDO Order is better-priced, *i.e.,* if the Direct Listing Auction is priced above the limit price of the IDO Order, the IDO Order would be a better-priced order guaranteed to participate in such Auction. However, under Rule 7.35A(h)(2), at-priced orders are not guaranteed to participate in an Auction and are allocated as provided for in Rule 7.35A(h)(2)(A)–(D). Because an IDO Order must be executed in full in order for the DMM to conduct the Direct Listing Auction, the Exchange does not believe that an at-priced IDO Order should be subject to the allocation process specified in Rule 7.35A(h)(2) because it may result in a partial execution of the IDO Order. Providing priority to an at-priced IDO Order would increase the potential for the IDO Order to be executed in full, and therefore for the Primary Direct Floor Listing to proceed. To effect such change, the Exchange proposes new subparagraph (4) in Rule 7.35A(h), regarding Auction Allocation, to provide that an IDO Order would be guaranteed to participate in the Direct Listing Auction at the Auction Price and that if the limit price of the IDO Order is equal to the Auction Price, the IDO Order would have priority at that price.

Fourth, unlike a Direct Listing Auction for a Selling Shareholder Direct Floor Listing, the registration statement for a Primary Direct Floor Listing would include a price range within which the company anticipates selling shares it is offering. Accordingly, Rules 7.35A(d)(2)(A)(iv) [24] and 7.35A(g)(1) [25] are not applicable to a Primary Direct Floor Listing and the Exchange proposes to provide that the requirements of those Rules would be applicable only to a Selling Shareholder Direct Floor Listing by amending the text of those Rules to replace the term ''Direct Listing'' with the term ''Selling Shareholder Direct Floor Listing.''

The Exchange further notes that any services provided by a financial advisor to the issuer of a security listing in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing (the ''financial advisor'') and the DMM assigned to that security must provide such services in a manner that is consistent with all federal securities laws, including Regulation M and other anti-manipulation requirements. For example, when a financial advisor provides a consultation to the Exchange as required by Rule 7.35A(d)(2)(A)(iv), when the DMM consults with a financial advisor as required by Rule 7.35A(g)(1), or when a financial advisor otherwise assists or consults with the DMM as to pricing or opening of trading in Selling Shareholder Direct Floor Listing or Primary Direct Floor Listing, the financial advisor and DMM will not act inconsistent with Regulation M,[26] and other anti-manipulation provisions of the federal securities laws, or Exchange Rule 2020.[27] The Exchange has retained the Financial Industry Regulatory Authority, Inc. (''FINRA'') pursuant to a regulatory services agreement to monitor such compliance with Regulation M and other anti-manipulation provisions of the federal securities laws and Rule 2020.[28] To promote clarity and transparency in Exchange rules regarding the consultation requirements of Rules 7.35A(d)(2)(A)(iv) and 7.35A(g)(1), the Exchange proposes to add Commentary .10 to Rule 7.35A to provide:

> In connection with a Selling Shareholder Direct Floor Listing, the financial advisor to the issuer of the security being listed (''financial advisor'') and the DMM assigned to such security are reminded that any consultation that the financial advisor provides to the Exchange as required by paragraph (d)(2)(A)(iv) of this Rule and any consultation between the DMM and financial advisor as required by paragraph (g)(1) of this Rule are to be conducted in a manner that is consistent with the federal securities laws, including Regulation M and other anti-manipulation requirements.

Finally, the Exchange proposes to amend Rule 7.35C to remove references to Direct Listing Auctions. Rule 7.35C sets forth the procedures for the Exchange to facilitate an Auction for one or more securities if a DMM cannot facilitate an Auction under Rules 7.35A or 7.35B and specifies how such Exchange-facilitated Auctions would function, including for a Direct Listing Auction. Because of the importance of the DMM to a Direct Listing Auction, the Exchange proposes that if a DMM is unable to manually facilitate a Direct Listing Auction, the Exchange would not proceed with either a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing. To effect this change, the Exchange proposes to amend Rule 7.35C(a) to specify that the Exchange would not facilitate a Direct Listing Auction and amend Rules 7.35C(a)(3), (b)(1), and (b)(3) to delete references to a Direct Listing Auction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[29] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[30] in particular in that it is designed to

[24] Rule 7.35A(d)(2)(A)(iv) currently provides what the Indication Reference Price will be ''for a security that is a Direct Listing that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.''

[25] Rule 7.35A(g)(1) currently provides: ''When facilitating the opening on the first day of trading of a Direct Listing that has not had recent sustained history of trading in a Private Placement prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.'' The Exchange proposes a non-substantive amendment to Rule 7.35A(g)(1) to add the word ''Market'' after ''Private Placement.''

[26] For example, in connection with the Selling Shareholder Direct Floor Listing of Spotify Technology S.A, the Commission's Division of Trading and Markets provided a no-action letter relating to Regulation M that discussed, in part, the role of the financial advisor and the DMM in such listing. *See* Letter from Josephine J. Tao, Assistant Director, Division of Trading and Markets, United States Securities and Exchange Commission to Ms. Dana G. Fleischman, Latham & Watkins LLP, dated March 23, 2018, available here: *https://www.sec.gov/divisions/marketreg/mr-noaction/2018/spotify-technology-032318-regm.pdf.*

[27] Exchange Rule 2020, which is identical to FINRA Rule 2020, provides that ''[n]o member or member organization shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulation, deceptive or other fraudulent device or contrivance'' (''Rule 2020'').

[28] The Exchange expects to issue regulatory guidance in connection with a company conducting a Primary Direct Floor Listing. Such regulatory guidance would include a reminder to member organizations that activities in connection with a Primary Direct Floor Listing, like activities in connection with other listings, must be conducted in a manner not inconsistent with Regulation M and other anti-manipulation provisions of the federal securities laws and Exchange Rule 2020.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment to the Manual is consistent with the protection of investors. The proposal would require that a company in a Primary Direct Floor Listing (1) sell at least $100 million of its listed securities in the opening auction, or (2) have an aggregate market value of publicly-held shares immediately prior to listing together with the market value of shares the company sells in the opening auction total at least $250 million, with such market value calculated using a price per share equal to the lowest price of the price range established by the issuer in its registration statement. The Exchange notes that a company may list on the NYSE in connection with its initial public offering with a market value of publicly-held shares of $40 million and that, in the Exchange's experience in listing IPOs, a liquid trading market develops after listing for issuers with a much smaller value of publicly-held shares than the Exchange anticipates would exist after the opening auction in a Primary Direct Floor listing under the proposed market value of publicly-held shares requirements. Consequently, the Exchange believes that these requirements would provide that any company conducting a Primary Direct Floor Listing would be of a suitable size for Exchange listing and that there would be sufficient liquidity for the security to be suitable for auction market trading.

Officers, directors or owners of more than 10% of the company's common stock prior to the opening auction may purchase shares sold by the company in the opening auction, in the event that such purchases are not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. In addition, in the same way as for shares of a company listing following a traditional underwritten IPO, such an insider owner may purchase shares sold by other shareholders or sell its own shares in the opening auction and in trading after the opening auction, to the extent not inconsistent with general anti-manipulation provisions, Regulation M, and other applicable securities laws. Except as proposed for Primary Direct Floor Listings, shares held by these types of inside investors are not included in calculations of publicly-held shares for purposes of Exchange listing rules. The Exchange notes that after initial listing such investors may acquire in secondary market trades shares sold by the issuer in a Primary Direct Floor Listing that were included when calculating that issuer's compliance with the market value of publicly-held shares initial listing requirement. However, the Exchange believes that because of the enhanced publicly-held shares requirement for a listing in conjunction with a Primary Direct Floor Listing, which is much higher than the Exchange's minimum $40 million requirement for a traditional underwritten IPO, and the neutral nature of the opening auction process, companies using a Primary Direct Floor Listing will have an adequate public float and liquid trading market after the completion of the opening auction.

The Exchange believes that the proposed amendments to Exchange Rules to amend the definition of Direct Listing and Rules 7.31 and 7.35A to describe how an IDO Order would participate in a Direct Listing Auction for a Primary Direct Floor Listing would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would guarantee that, if the Direct Listing Auction for a Primary Direct Floor Listing occurs, all shares offered by the company would participate.

Unlike an IPO, a company undergoing a Primary Direct Floor Listing would not have an underwriter to guarantee that a specified number of shares would be sold by the company within a price range established in the company's effective registration statement. To ensure that the Direct Listing Auction is conducted consistent with an issuer's effective registration statement, the Exchange proposes that the Direct Listing Auction for a Primary Direct Floor Listing under Section 102.01B of the Manual, would not proceed unless the quantity of shares specified in the IDO Order would be sold in such Auction within a price range specified by the company in its registration statement. This certainty would be effected in two ways. First, the proposed IDO Order would be required to be equal to the total number of shares disclosed as being offered by the company in the prospectus included in the effective registration statement filed in connection with its listing. If the IDO Order cannot be satisfied in full, then the Direct Listing Auction would not proceed. Second, the Direct Floor Auction for a Primary Direct Floor Listing would be required to be priced within the range established by the company in its effective registration statement.

The Exchange further believes that these proposed changes would remove impediments to and perfect the mechanism of a free and open market and a national market system because they are designed to function seamlessly with the existing process for a DMM-facilitated Direct Listing Auction, including the requirement that such Auction be facilitated manually by a DMM, the process for publishing pre-opening indications, and the requirement that all better-priced sell orders are guaranteed to participate in such Auction. In addition, the proposed changes are designed to protect investors and the public interest because they would provide an opportunity for the Primary Direct Floor Listing to proceed so that the issuer's securities can be listed and begin trading on the secondary market. Accordingly, the Exchange believes that it would be consistent with this goal for an at-priced IDO Order, which must be satisfied in full, to have priority over other at-priced orders if the limit price of the IDO Order is equal to the Auction Price. Proposed Rule 7.35A(h)(4) would eliminate the potential for a partial execution of the IDO Order and provide greater opportunity for the IDO Order to be executed in full, thus allowing the Direct Listing Auction to proceed.

The Exchange believes the proposed amendments to Rule 7.35C would remove impediments to and perfect the mechanism of a fair and orderly market and a national market system because the Exchange believes that having the DMM manually facilitate a Direct Listing Auction would promote a fair and orderly auction process for such an Auction. Therefore, if the DMM is unavailable to facilitate such Direct Listing Auction manually, the Exchange would not proceed with facilitating a Direct Listing Auction for either a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, but would rather increase competition by providing new pathways for companies to access the public markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–67, and should be submitted on or before July 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14013 Filed 6–29–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89146; File No. SR–IEX–2020–07]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 11.190(b)(13) To Discontinue the Market Maker Peg Order and Make Conforming Changes

June 24, 2020.

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 June 15, 2020, 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 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

Pursuant to the provisions of Section 19(b)(1) under the Act[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend IEX Rule 11.190(b)(13) (Market Maker Peg Order) to discontinue the Market Maker Peg Order and make conforming changes. The Exchange has designated this 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 statement [sic] 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 change is to amend IEX Rule 11.190(b)(13) (Market Maker Peg Order) to discontinue the Market Maker Peg Order and make conforming changes to other IEX rules.

The Market Maker Peg order is a one-sided displayed limit order that is designed to simplify market maker compliance with the continuous quoting and pricing obligations set forth in IEX Rule 11.151 by providing quotation adjusting functionality.[8] Only IEX Members registered as Market Makers pursuant to IEX Rule 11.150 may use Market Maker Peg Orders, and use of such orders is optional.

In addition to its quotation adjusting functionality, the Market Maker Peg order is also designed to provide an effective compliance tool to facilitate market makers' compliance with the requirements of Rule 15c3–5 under the Act (the "Market Access Rule")[9] and Regulation SHO.[10] Specifically, when using a Market Maker Peg order, market makers would have control of order origination, as required by the Market Access Rule, while also allowing market makers to make marking and locate determinations prior to order entry, as required by Regulation SHO, while also facilitating compliance with their Exchange market making obligations.

[31] 17 CFR 200.30–3(a)(12).

[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 IEX Rule 11.190(b)(13) for a complete description of the Market Maker Peg order.

[9] 17 CFR 240.15c3–5.

[10] 17 CFR 242.200 through 242.204.

Market Maker Peg Orders are not eligible for routing pursuant to IEX Rule 11.230(b) and are always displayed on the Exchange. In addition, a new timestamp is created for the order each time that it is automatically adjusted in accordance with the proposed rule. Market Maker Peg Orders may only be entered by a registered Market Maker, pursuant to IEX Rule 11.150.

There are currently no Members registered as Market Makers and therefore no Members eligible to use the order. Accordingly, the Exchange proposes to discontinue the Market Maker Peg order, delete the existing text of IEX Rule 11.190(b)(13) (which describes the Market Maker Peg order), and reserve that provision.

In conjunction with the proposed discontinuation of the Market Maker Peg order, the Exchange proposes to make two conforming changes. First, the Exchange proposes to delete the text of IEX Rule 11.340(d)(1)(A), related to rounding of the price of Market Maker Peg Orders in connection with the Plan to Implement a Tick Size Pilot Program (which has terminated). Second, the Exchange proposes to delete text in IEX Rule 11.510(c)(1) which provides that, pursuant to Rule 11.190(b)(13), each time a Market Maker Peg Order is automatically adjusted by the System, all inbound and outbound communications related to the modified order instruction will traverse an additional POP between the Market Maker Peg Order repricing logic and the Order Book. Both of these provisions are rendered obsolete with the discontinuation of the Market Maker Peg order, as proposed.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[11] and furthers the objectives of 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.

As discussed in the Purpose section, the proposed rule change is designed to discontinue the Market Maker Peg Order, because no Members are eligible to use the order type. Consequently, the Exchange believes is consistent with the protection of investors and the public interest to discontinue the Market Maker Peg Order since the lack of current demand for the order type does not warrant the infrastructure and ongoing maintenance expenses required to support it. Further, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest since it is designed to avoid any potential confusion regarding the availability of the Market Maker Peg Order to Members. In addition, the Exchange notes that use of the Market Maker Peg Order is purely optional on the part of a Market Maker and, in the event that any Member were to register as a Market Maker, such Member could use other IEX order types to comply with the continuous quoting and pricing obligations set forth in IEX Rule 11.151. Lastly, the Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the Market Maker Peg Order will no longer be available to any Member of the Exchange.

Further, the Exchange believes that the proposed conforming rule changes, as discussed in the Purpose section, are consistent with the protection of investors and the public interest because they will provide clarity to market participants by deleting references to the now discontinued Market Maker Peg Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather remove an order type for which there is currently no demand and eliminate the infrastructure and ongoing maintenance expenses to support it.

Furthermore, the Exchange believes the proposed rule change does not impose any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the Market Maker Peg order will no longer be available to any Member of the Exchange, and thus all Members will be impacted in the same manner. Further, as discussed in the Statutory Basis section, use of the Market Maker Peg Order by a registered Market Maker is optional and not required in order to comply with the in the continuous quoting and pricing obligations set forth in IEX Rule 11.151.

The Exchange also does not believe that the proposed rule change would impose a burden on inter-market competition since other exchanges are free to adopt or discontinue comparable order types.

Finally, the proposed conforming rule changes, as discussed in the Purpose section, are not designed to address any competitive issue, but rather to provide clarity to market participants by deleting references to the now discontinued Market Maker Peg Order.

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)[13] of the Act and Rule 19b–4(f)(6)[14] 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.

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)[15] 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:

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2020–07 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–2020–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2020–07 and should be submitted on or before July 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14011 Filed 6–29–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89141; File No. SR–NSCC–2020–011]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Clearing Fund Maintenance Fee

June 24, 2020.

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 June 16, 2020, National Securities Clearing Corporation (''NSCC'') 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 clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Fund Maintenance Fee (''Maintenance Fee'') set forth in Addendum A of the NSCC Rules & Procedures (''Rules'').[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the existing Maintenance Fee set forth in Addendum A of the Rules.[6]

Maintenance Fee

The Maintenance Fee was implemented in 2016 pursuant to a proposed rule change (''2016 Rule Change'') in order to (i) diversify NSCC's revenue sources, mitigating NSCC's dependence on revenues driven by trading volumes, and (ii) add a stable revenue source that would contribute to NSCC's operating margin by offsetting increasing costs and expenses.[7] The fee is charged to all NSCC Members and Limited Members that are required to make deposits to the NSCC Clearing Fund (collectively, ''Members'') in proportion to the Member's average monthly cash deposit to the Clearing Fund.

Since the 2016 Rule Change, the Maintenance Fee has been calculated monthly, in arrears, as the product of (A) 0.25 percent and (B) the average of the Member's actual cash deposit to the NSCC Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360. However, by its terms, the fee is waived if the monthly rate of return on NSCC's investment of the cash portion of the Clearing Fund was less than 0.25 percent for the month (''Waiver Provision'').

NSCC represents that the Waiver Provision was included for the benefit of Members. NSCC believed that if its monthly rate of return on the investment of cash from the Clearing Fund was less than 0.25 percent, then Members would likely be experiencing similarly low interest income on their deposits, including excess reserves, if applicable; in which case, NSCC would waive the fee. Although this approach exposed NSCC to the risk of not receiving revenue from the Maintenance Fee at a time of increased costs, NSCC did not believe that such an exposure would be common, significant, or long-term. Moreover, at the time of adoption, NSCC's default liquidity resources were not as diversified and robust as they are now, nor were such resources as costly or expensive to secure and maintain, as described below.

Increased Costs and Expenses

Due to the coronavirus global pandemic and overall reaction by the financial markets, NSCC's cost of funding has risen sharply in 2020, particularly for three of NSCC's key

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms not defined herein are defined in the Rules *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[6] Addendum A, Rules, *supra* note 5.

[7] Securities Exchange Act Release No. 78525 (August 9, 2016), 81 FR 54146 (August 15, 2016) (SR–NSCC–2016–002).

default liquidity resources: NSCC's committed 364-day line-of-credit facility with a consortium of banks (''LOC''); [8] the proceeds of the issuance and private placement of short-term, unsecured notes in the form of commercial paper and extendable notes (''CP''); [9] and proceeds of the issuance of medium-term notes (''MTNs'').[10] This year's annual renewal of the LOC cost substantially more than past renewals due to a significant fee increase that NSCC had to pay to the lenders in order for NSCC to reach its target commitment size in the current economic environment. Meanwhile, for the CP program and the MTNs, the spread between the CP rates and MTN coupons that NSCC must pay and the interest it earns on the cash proceeds from those liquidity resources has widened significantly, making the resources considerably more expensive than they have been or would have been in past economic conditions.

Collectively, the unexpected increases in cost and expense to secure and maintain those default liquidity resources has added millions of dollars to NSCC's non-operating expense. If unaddressed, the increases could negatively impact NSCC's 2020 financial results and its access to default liquidity resources. A deteriorating operating margin could jeopardize NSCC's credit ratings. A downgrade to an NSCC credit rating could further increase such costs and expenses, but more importantly, could reduce the overall availability of default liquidity resources to NSCC, if investors or lending banks reduce their current levels of engagement with NSCC.

Modifications to the Maintenance Fee

To help address this immediate issue and better position NSCC going forward, with respect to its ability to fund its default liquidity resources in various economic environments, as well as to improve the overall functioning of the Maintenance Fee, NSCC is modifying the fee in three ways. First, NSCC is removing the Waiver Provision. Second, instead of using the fixed rate of 0.25 percent when calculating the Maintenance Fee, NSCC will calculate the fee using the corresponding month's average Interest Rate on Excess Reserves (*i.e.,* the IOER rate) that is determined by the Board of Governors of the Federal Reserve System (''Federal Reserve'').[11] Third, NSCC is setting a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the fee calculation.

NSCC is removing the Waiver Provision so that NSCC will be able to generate revenue from the Maintenance Fee even if NSCC's monthly rate of return on the investment of cash deposits from the Clearing Fund is less than 0.25 percent. The ability to generate such revenue under such circumstances is important in helping NSCC offset its costs and expenses in any economic environment.

NSCC is replacing the current fixed rate of 0.25 percent with the month's average IOER rate when calculating the Maintenance Fee because the IOER rate is (i) publicly available, well established, and a widely used benchmark (*i.e.,* the rate is transparent); (ii) determined by the Federal Reserve (*i.e.,* the rate is reliable); and (iii) the same rate that NSCC receives on the cash deposits it holds in its cash deposit account at the Federal Reserve Bank of New York (*i.e.,* the rate is impartial).

NSCC is setting a ceiling of 0.25 percent on the IOER rate that it uses to calculate the Maintenance Fee so that Members will not be charged an amount greater than what is possible under the original calculation. However, it is setting a floor of 0.00 percent so if the IOER rate turns negative, NSCC will not owe Members an amount based on the calculation.

Changes to the Rules

To effectuate the changes described above, Subsection G (Clearing Fund Maintenance Fee) of Section V (Pass-Through and Other Fees) of Addendum A (Fee Structure) to the Rules will be modified to (i) remove the Waiver Provision, (ii) replace the existing fixed rate of 0.25 percent with the month's average IOER rate, and (iii) set a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the fee's calculation.

Implementation Timeframe

The above described changes to the Maintenance Fee will take effect immediately upon filing with the Commission, with the next assessment of the fee using those changes being for the month of July 2020.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act [12] requires that NSCC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes that the changes to the Maintenance Fee are consistent with this provision of the Act.

As described above, the proposal will modify the existing Maintenance Fee in three ways: (i) Removing the Waiver Provision, (ii) calculating the fee using the month's average IOER rate, instead of the current fixed rate of 0.25 percent, and (iii) setting a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in the calculation.

Because these changes do not alter how the Maintenance Fee is currently allocated (*i.e.,* charged) to Members, NSCC believes the fee will continue to be equitably allocated. More specifically, as mentioned above, the Maintenance Fee is and will continue to be charged to all Members in proportion to the Member's average monthly cash deposit to the Clearing Fund. As such, and as is currently the case, Members that make greater use of NSCC's guaranteed services or which have activity in those services that present greater risk to NSCC will generally be subject to a larger Maintenance Fee because such Members will typically be required to maintain larger Clearing Fund deposits pursuant to the Rules.[13] Conversely, Members that use NSCC's guaranteed services less or which have activity that presents less risk will generally be subject to a smaller Maintenance Fee because such Members will typically be required to maintain smaller Clearing Fund deposits pursuant to the Rules.[14] The described changes do not adjust that allocation. For this reason, NSCC believes the Maintenance Fee will continue to be equitably allocated among Members.

Similarly, NSCC believes that the Maintenance Fee will continue to be a reasonable fee under the described changes. First, use of the IOER rate in calculating the fee is reasonable because, as described above, the IOER rate is (i) transparent, (ii) reliable, and (iii) impartial. Second, use of the IOER rate, coupled with a ceiling of 0.25 percent, will not only ensure that Members are not assessed an amount greater than the original calculation, but that Members will be charged less at times when the IOER rate is less than 0.25 percent. Third, instituting a floor of

[8] *See* Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR–NSCC–2017–802).

[9] *See* Securities Exchange Act Release Nos. 75730 (August 19, 2015), 80 FR 51638 (August 25, 2015) (SR–NSCC–2015–802); 82676 (February 9, 2018), 83 FR 6912 (February 15, 2018) (SR–NSCC–2017–807).

[10] *See* Securities Exchange Act Release No. 87912 (January 8, 2020), 85 FR 2187 (January 14, 2020) (SR–NSCC–2019–802).

[11] Policy Tools, Interest on Required Reserve Balances and Excess Balances, *https://www.federalreserve.gov/monetarypolicy/reqresbalances.htm.*

[12] 15 U.S.C. 78q–1(b)(3)(D).

[13] *See* Rule 4 and Procedure XV, Rules, *supra* note 5.

[14] *Id.*

0.00 percent will avoid the unreasoned situation of NSCC having to pay Members based on calculating the fee with a negative IOER rate. Finally, although removal of the Waiver Provision means that Members could be assessed a Maintenance Fee at times when they may not otherwise have been assessed the fee, the removal of this provision enables NSCC to collect needed revenue from the fee in almost any economic environment. For this reason, NSCC believes the Maintenance Fee will continue to be reasonable.

Based on the forgoing, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D).[15]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the changes to the Maintenance Fee will have an impact on competition. First, as described above, the Maintenance Fee is charged ratably based on Members' use of NSCC's guaranteed services, as reflected in Members' cash deposits to the Clearing Fund. Thus, the fee is designed to be reflective of each Member's individual activity at NSCC.

Second, NSCC does not believe the changes to set a ceiling of 0.25 percent and a floor of 0.00 percent on the IOER rate used in calculating the Maintenance Fee will have any impact on competition because (i) a ceiling of 0.25 percent means that Members cannot be assessed an amount greater than what could have been assessed under the original calculation of the fee, and (ii) a floor of 0.00 percent means that NSCC will not have to pay Members if the fee were to be calculated with a negative IOER rate. In other words, both of these changes maintain the status quo in how the fee operates in these two respects.

Third, appreciating that the value of a dollar is not consistent for each Member, the change to remove the Waiver Provision could be a perceived burden on competition because Members could be assessed a fee at a time when they would not otherwise have been under the original calculation. However, the change to calculate the Maintenance Fee using the month's average IOER rate, instead of the current fixed rate of 0.25 percent, could relieve a competitive burden or promote competition because Members could be assessed a smaller fee than what may have been assessed using the original calculation. Members could choose to direct such savings to competitive aspects of their business. Therefore, in making these two changes together, NSCC believes the competitive aspects are possibly offsetting.

Notwithstanding the above, if removal of the Waiver Position, and the resulting imposition of the Maintenance Fee at a time when a Member would not have otherwise been assessed the fee, would prove to be a greater competitive burden for any one Member than the counterbalancing aspects of calculating the fee using the month's average IOER rate, instead of the current fixed rate of 0.25 percent, NSCC believes such a burden would be necessary and appropriate. The burden would be necessary because it is essential that NSCC offset some of its costs and expenses with revenue generated from the Maintenance Fee. As described above, not doing so could adversely affect NSCC's credit ratings, which could further increase funding or, possibly, decrease the availability of crucial liquidity resources for NSCC. The burden would be appropriate because, as described above, the Maintenance Fee is calculated, using a balanced formula, to assess a fee that is reflective of the Member's use of NSCC's guaranteed services, so that NSCC can defray some of its costs and expenses in providing those services.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

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[16] and paragraph (f) of Rule 19b–4 thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2020–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2020–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2020–011 and should be submitted on or before July 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14008 Filed 6–29–20; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78q–1(b)(3)(D).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16493 and #16494; ILLINOIS Disaster Number IL–00060]

Administrative Declaration of a Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 06/23/2020.

Incident: Civil Unrest.

Incident Period: 05/26/2020 through 06/08/2020.

DATES: Issued on 06/23/2020.

Physical Loan Application Deadline Date: 08/24/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/23/2021.

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: A. Escobar, Office of Disaster Assistance, 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 filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cook
Contiguous Counties:
Illinois: DuPage, Kane, Lake, McHenry, Will
Indiana: Lake

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16493 F and for economic injury is 16494 0.

The States which received an EIDL Declaration # are Illinois, Indiana.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,
Administrator.

[FR Doc. 2020–14029 Filed 6–29–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16487 and #16488; TEXAS Disaster Number TX–00557]

Administrative Declaration of a Disaster for the State of TEXAS

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 06/23/2020.

Incident: Severe Storms, Flooding and a Tornado.

Incident Period: 05/22/2020.

DATES: Issued on 06/23/2020.

Physical Loan Application Deadline Date: 08/24/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/23/2021.

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: A. Escobar, Office of Disaster Assistance, 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 filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Montague
Contiguous Counties:
Texas: Clay, Cooke, Jack, Wise
Oklahoma: Jefferson, Love

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16487 B and for economic injury is 16488 0.

The States which received an EIDL Declaration # are Texas and Oklahoma.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,
Administrator.

[FR Doc. 2020–14030 Filed 6–29–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11135]

30-Day Notice of Proposed Information Collection: Statement of Material Change, Merger, Acquisition, or Divestment of a Registered Party

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to July 30, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached at *BattistaAL@state.gov* or 202–663–3136.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Statement of Material Change, Merger, Acquisition, or Divestiture of a Registered Party.
• *OMB Control Number:* 1405–0227.
• *Type of Request:* Revision.
• *Originating Office:* Directorate of Defense Trade Controls, Bureau of Political Military Affairs, Department of State (T/PM/DDTC).
• *Form Number:* DS–7789.
• *Respondents:* Individuals and companies registered with DDTC and engaged in the business of manufacturing, brokering, exporting, or temporarily importing defense hardware or defense technology data.
• *Estimated Number of Respondents:* 400.
• *Estimated Number of Responses:* 400.
• *Average Time per Response:* 2 hours.
• *Total Estimated Burden Time:* 800 hours.
• *Frequency:* On occasion.
• *Obligation To Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, U.S. Department of State, in accordance with the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), has the principal missions of taking final action on license applications and other requests for defense trade transactions via commercial channels, ensuring compliance with the statute and regulations, and collecting various types of reports. By statute, Executive Order, regulation, and delegation of authority, DDTC is charged with controlling the export and temporary import of defense articles, the provision of defense services, and the brokering thereof, which are covered by the U.S. Munitions List.

ITAR §§ 122.4 and 129.8 requires registrants to notify DDTC in the event of a change in registration information or if the registrant is a party to a merger, acquisition, or divestiture of an entity producing or marketing ITAR-controlled items. Based on certain conditions enunciated in the ITAR, respondents must notify DDTC of these changes at differing intervals—no less than 60 days prior to the event, in the event that a foreign person is acquiring a registered entity, and/or within 5 days of its culmination. This information is necessary for DDTC to ensure registration records are accurate and to determine whether the transaction is in compliance with the regulations (*e.g.,* with respect to ITAR § 126.1); assess the steps that need to be taken with respect to existing authorizations (*e.g.,* transfers); and to evaluate the implications for U.S. national security and foreign policy.

Methodology

This information will be collected by DDTC's electronic case management system and respondents will certify the data via electronic signature.

Neal Kringel,

Director of Management, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2020–13992 Filed 6–29–20; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0028]

Interagency Labor Committee for Monitoring and Enforcement Procedural Guidelines for Petitions Pursuant to the USMCA

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Interagency Labor Committee for Monitoring and Enforcement (Interagency Labor Committee) invites public comments on the procedures for submissions by the public of information with respect to potential failures of Canada or Mexico to implement their labor obligations under the United States-Mexico-Canada Agreement (USMCA or Agreement).

DATES: To be assured of consideration, submit comments by August 15, 2020.

ADDRESSES: The Office of the United States Trade Representative (USTR) strongly prefers electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*), using Docket Number USTR–2020–0028. Follow the instructions for submitting comments below. For alternatives to on-line submissions, please contact Joshua Kagan, Deputy Assistant U.S. Trade Representative for Labor, in advance of the August 15, 2020 deadline at *Joshua.M.Kagan@ustr.eop.gov* or (202) 395–2953.

FOR FURTHER INFORMATION CONTACT: Joshua Kagan, Deputy Assistant U.S. Trade Representative for Labor, at *Joshua.M.Kagan@ustr.eop.gov* or (202) 395–2953.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2006, the United States Department of Labor published an updated notice of procedural guidelines for the receipt and review of public submissions on matters related to free trade agreement labor chapters and the North American Agreement on Labor Cooperation (NAALC) . Those guidelines continue to apply to public submissions on matters related to free trade agreement labor chapters other than the USMCA.

The Protocol of Amendment for the USMCA terminates the NAALC upon the protocol's entry into force on July 1, 2020. Section 711 of the USMCA Implementation Act (Implementation Act), which entered into force on January 29, 2020, establishes the Interagency Labor Committee. Section 716(a) of the Implementation Act requires the Interagency Labor Committee to establish procedures for submissions by the public of information with respect to potential failures to implement the labor obligations of a USMCA country.

II. Public Comments

The Interagency Labor Committee invites public comments on the interim procedural guidelines in the Annex to this notice. You must submit comments by August 15, 2020. You must make all submissions in English via *Regulations.gov*, using Docket Number USTR–2020–0028. USTR will not accept hand-delivered submissions. To make a submission using *Regulations.gov*, enter Docket Number USTR–2020–0028 in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.' The *Regulations.gov* website offers the option of providing comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. The Interagency Labor Committee prefers that you provide submissions in an attached document and note 'see attached' in the 'type comment' field on the online submission form. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files.

You will receive a tracking number upon completion of the submission procedure at *Regulations.gov.* The tracking number is confirmation that *Regulations.gov* received the submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*. USTR may not consider documents you do not submit in accordance with these instructions. If you are unable to provide submissions as requested, please contact Joshua Kagan, Deputy Assistant U.S. Trade Representative for Labor, at *Joshua.M.Kagan@ustr.eop.gov* or (202) 395–2953, in advance of the August 15, 2020 deadline to arrange for an alternative method of transmission. General information concerning USTR is available at *www.ustr.gov.*

III. Business Confidential Submissions

If you ask USTR to treat information you submitted as business confidential information (BCI), you must certify that the information is business confidential and you would not customarily release it to the public. You must clearly designate BCI by marking the submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and indicating, via brackets, the specific information that is BCI. Additionally, you must include 'Business Confidential' in the 'type comment' field. For any submission containing BCI, you must separately submit a non-confidential version, *i.e.,* not as part of the same submission with the confidential version, indicating where BCI has been redacted. USTR will post the non-confidential version in the docket and it will be open to public inspection.

ANNEX—USMCA Procedural Guidelines

Summary

The Interagency Labor Committee for Monitoring and Enforcement (Committee) announces the procedures for the receipt and review of petitions and information pursuant to the United States-Mexico-Canada Agreement (USMCA) Chapter 23 (Labor Chapter) and Annex 31–A (Facility-Specific Rapid Response Labor Mechanism, hereafter Rapid Response Mechanism), under Section 716 of the USMCA Implementation Act (Pub. L. 116–113) (Implementation Act). Direct petitions and information discussed below to the Department of Labor, Bureau of International Labor Affairs (ILAB), Office of Trade and Labor Affairs (OTLA), for Committee consideration.

For purposes of receiving petitions and information discussed below, the OTLA's contact information is: Office of Trade and Labor Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–5315, Washington, DC 20210, *USMCA-petitions@dol.gov,* telephone number 202–693–4887.

Section A. Definitions

Another Party or *other Party* means a country other than the United States that is a Party to the USMCA.

Covered facility means a facility in the territory of Mexico that is in a Priority Sector and (i) produces a good, or supplies a service, traded between the Parties, or (ii) produces a good, or supplies a service, that competes in the territory of a Party with a good or a service of the United States.

Days means calendar days, unless otherwise specified.

Denial of rights means a denial of the right of free association and collective bargaining under Mexican legislation that complies with Annex 23–A (Worker Representation in Collective Bargaining in Mexico) of the USMCA.

Enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization.

Labor Chapter means Chapter 23, including Annex 23–A of the USMCA.

Labor obligations means obligations under the Labor Chapter, including Annex 23–A.

Labor organization includes any organization of any kind, including local, provincial, territorial, state, national, and international organizations or federations, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

Party means a Party to the USMCA.

Person means a natural person or an enterprise.[1]

Petition means a written statement to the Committee asserting that there is a denial of rights at a covered facility (Rapid Response Petition) or any other failure to comply with the obligations of another Party under the Labor Chapter of the USMCA (Labor Chapter Petition).[2]

Petitioner means any person that files a petition.

Priority sector means a sector that produces manufactured goods, including but not limited to, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, and cement; supplies services; or involves mining.

Section B. The Committee

1. In accordance with Section 711 of the Implementation Act, the Committee, co-chaired by the U.S. Trade Representative and the Secretary of Labor,[3] has been established to coordinate United States efforts with respect to each Party:

a. To monitor the implementation and maintenance of the labor obligations.

b. To monitor the implementation and maintenance of Mexico's labor reform.

[1] For greater certainty, ''person'' includes labor organizations and non-governmental organizations.

[2] ''Petitions with accompanying information'' for purposes of this document are similar to ''submissions'' as that term is used in the OTLA Procedural Guidelines regarding other free trade agreements. *See* Bureau of International Affairs; Notice of Reassignment of Functions of Office of Trade Agreement Implementation to Office of Trade and Labor Affairs; Notice of Procedural Guidelines, 71 FR 76691 (December 14, 2006).

[3] The day-to-day operations of the Committee will be carried out by the Assistant U.S. Trade Representative for Labor Affairs, Office of the United States Trade Representative (USTR), and the Deputy Undersecretary for International Affairs at the U.S. Department of Labor.

c. To request enforcement actions with respect to a Party that is not in compliance with such labor obligations.

2. The Committee will review petitions and accompanying information regarding another Party's labor obligations arising under the USMCA, as set out in Section D.

3. In connection with any of its activities, the Committee may consider any information received from the public, including by means of the Department of Labor-monitored web-based hotline referred to in Section 717 of the Act.

4. The ILAB is the designated contact point, in regular consultation and coordination with the USTR Office of Labor Affairs, pursuant to Article 23.15 of the Labor Chapter. Submit petitions and information for Committee consideration to the ILAB's OTLA.

Section C. Petitions and Accompanying Information

1. Any person of a Party may, through the OTLA, file a Rapid Response Petition or Labor Chapter Petition with the Committee.

2. A petition may be accompanied by information, as described below.

3. When the OTLA receives a petition, information for the Committee, or both, the OTLA will notify, and forward it to, the Committee. Upon receipt of a petition with accompanying information, the Committee will follow the relevant review procedures identified in Section D.[4]

4. A petition must be in writing and be dated. The Committee prefers submissions to OTLA by electronic means in searchable formats, but will accept a petitions by hand delivery or mail, including by courier. The Committee encourages any petitioner that does not submit electronically to provide electronic versions of all documents.

5. Any person may provide information for the Committee to the OTLA. The information should be in written format, when practicable. Written information may be provided by electronic means, hand delivery, or mail, including courier. Clear identification of the person sending information will facilitate follow-up communication, and is encouraged where feasible.

Rapid Response Petitions

6. Any Rapid Response Petition must:

a. Identify the person filing the petition, as well as the person's physical or email address, and other contact information.

b. Identify the facility to which the petition pertains.

c. Provide a description, including facts with sufficient specificity, of the matter alleged to constitute a denial of rights.

7. The Committee recommends that, as relevant and to the extent possible, each Rapid Response Petition be accompanied by information that supports the petitioner's allegation and addresses:

a. Whether the facility to which the petition pertains is a covered facility.

b. The laws, and specific provisions thereof, of Mexico with which there is alleged non-compliance.

c. Whether relief has been sought under the domestic laws or procedures of Mexico, and, if so, the status of any proceedings.

d. Whether any matter referenced in the petition has been addressed by, or is pending before, any international body.

Labor Chapter Petitions

8. Any Labor Chapter Petition must identify:

a. The person filing the petition, as well as the person's physical or email address, and other contact information.

b. The other Party alleged to be out of compliance with an obligation under the Labor Chapter.

c. Reasons, including facts with sufficient specificity, supporting the petitioner's allegation that the other Party is out of compliance.

9. The Committee recommends that, as relevant and to the extent possible, each Labor Chapter Petition be accompanied by information that supports the allegation and addresses:

a. The particular obligation in the Labor Chapter with which the petitioner considers there is non-compliance.

b. Whether there has been harm to the petitioner or other persons, and, if so, to what extent.

c. For claims alleging a failure by a Party to effectively enforce labor laws under Article 23.5, whether there has been a sustained or recurring course of action or inaction of non-enforcement of labor law by another Party.

d. Whether the matter referenced in the petition occurred in a manner affecting trade or investment.

e. Whether relief has been sought under the domestic laws or procedures of the other Party, and, if so, the status of any proceedings.

f. Whether any matter referenced in the petition has been addressed by, or is pending before, any international body.

Section D. Review of a Petition

Rapid Response Petition

1. When the Committee receives a Rapid Response Petition with accompanying information, the Committee will review the Petition and information within 30 days of their receipt by the OTLA and determine whether there is sufficient, credible evidence of a denial of rights at the covered facility to enable the good-faith invocation of enforcement mechanisms.

2. If the Committee decides that there is sufficient, credible evidence of a denial of rights at the covered facility to enable the good faith invocation of enforcement mechanisms, the Committee will inform the U.S. Trade Representative for purposes of submitting a request for review in accordance with Article 31–A.4 of the USMCA.

3. If the Committee determines that there is not sufficient, credible evidence of a denial of rights at the covered facility to enable the good faith invocation of enforcement mechanisms, the Committee will certify that determination to the United States Senate Committee on Finance, the United States House of Representatives Ways and Means Committee, and the petitioner.

Labor Chapter Petition

4. When the Committee receives a Labor Chapter Petition with accompanying information, the Committee will review the Petition and information not later than 20 days after they were received by the OTLA.

5. If, after the review provided for in paragraph 4 of this section, the Committee determines that further review is warranted, the Committee will conduct a further review focused exclusively on determining, not later than 60 days after the date of submission, whether there is sufficient, credible evidence that the other Party is not in compliance with its labor obligations, for purposes of initiating enforcement action under Chapter 23 or Chapter 31 of the USMCA.

6. If the Committee determines that there is sufficient, credible evidence that the other Party is not in compliance with its obligations under the Labor Chapter for purposes of initiating enforcement action under Chapter 23 or Chapter 31 of the USMCA, the Committee will immediately so inform the U.S. Trade Representative.

Process and Considerations for Determinations

7. In making a determination identified in paragraph 1 or 5 of this

[4] For the United States, a written submission for purposes of USMCA Article 23.11 triggers the review procedures identified in Section D when it is a petition with accompanying information.

section, the Committee may consider, among other things, whether:

a. The petition clearly identifies the petitioner, and is dated.

b. The petition and accompanying information enable a determination of the scope and nature of the alleged non-compliance and permit an appropriate review.

c. Relief has been sought under the domestic laws of the other Party.

d. The matter or a related matter has been addressed by, or is pending before, any international body.

8. In making any determination identified in this section, the Committee may, among other things:

a. Consider views expressed by the public.

b. Consult with:

i. Officials of the United States government.

ii. Officials of any State or local government.

iii. Officials of any foreign government.

iv. The designated contact point of the relevant Party.

v. Labor organizations.

vi. Non-government representatives.

vii. Advisory committees.

viii. The petitioner.

9. The Committee may keep the petitioner apprised of the status of a review, including of a review determination.

Section E. Confidentiality

1. Information provided by a person or another Party to the Committee in confidence shall be treated as exempt from public inspection if the information meets the requirements of 5 U.S.C. 552(b) of the Freedom of Information Act or if otherwise permitted by law.

2. The Committee recommends that each person or Party requesting such treatment clearly mark ''provided in confidence'' on each page or portion of a page so provided and furnish an explanation as to the need for exemption from public inspection.

3. The OTLA and the Committee are sensitive to the confidentiality needs of a person requesting confidential treatment of information and will make every effort to protect a natural person's identity pursuant to the law.

Lewis Karesh,

Assistant United States Trade Representative for Labor, Office of the United States Trade Representative.

[FR Doc. 2020–14086 Filed 6–29–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2019–0032]

Surface Transportation Project Delivery Program; Alaska Department of Transportation Second Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice makes available the final second audit report for the Alaska Department of Transportation and Public Facilities (DOT&PF).

FOR FURTHER INFORMATION CONTACT: Mr. David T. Williams, Office of Project Development and Environmental Review, (202) 366–4074, *David.Williams@dot.gov,* or David Sett, Office of the Chief Counsel, (404) 562–3676, *David.Sett@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20905. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The DOT&PF published its application for NEPA assumption on May 1, 2016, and made it available for public comment for 30 days. After considering public comments, DOT&PF submitted its application to FHWA on July 12, 2016. The application served as the basis for developing a memorandum of understanding (MOU) that identified the responsibilities and obligations that DOT&PF would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on August 25, 2017, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and DOT&PF considered comments and proceeded to execute the MOU. Effective November 13, 2017, DOT&PF assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of title 23, U.S.C., requires the Secretary of Transportation to conduct annual audits during each of the first 4 years of State participation. After the fourth year, the Secretary shall monitor the State's compliance with the written agreement. The FHWA published a notice in the **Federal Register** at 85 FR 8089 on February 12, 2020, soliciting comments for 30 days, pursuant to 23 U.S.C. 327(g). The FHWA received comments on the draft report from the American Road & Transportation Builders Association (ARTBA). The ARTBA's comments were supportive of the Surface Transportation Project Delivery Program and did not relate specifically to the audit. The team has considered these comments in finalizing this audit report. This notice makes available the final report of DOT&PF's second audit under the program.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C 327; 23 CFR part 773.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program, FHWA Audit of the Alaska Department of Transportation

April 15–19, 2019

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) second audit of the Alaska Department of Transportation and Public Facilities' (DOT&PF) assumption of FHWA's project-level National Environmental Policy Act (NEPA) responsibilities and obligations pursuant to a 23 U.S.C. 327

Memorandum of Understanding (MOU). The DOT&PF entered the NEPA Assignment Program [1] after more than 8 years of experience making FHWA NEPA Categorical Exclusion (CE) determinations pursuant to 23 U.S.C. 326 (beginning September 22, 2009). Alaska's MOU was signed on November 3, 2017, and became effective on November 13, 2017. Three Federal-aid projects were excluded from the MOU, but the environmental process for these projects has since been completed. Currently, FHWA's NEPA responsibilities in Alaska include oversight and auditing of the DOT&PF's execution of the NEPA Assignment Program and certain activities excluded from the MOU such as projects advanced by direct recipients other than DOT&PF.

The FHWA audit team began preparing for the site visit in October 2018. This preparation included a review of DOT&PF's NEPA project files, DOT&PF's response to FHWA's pre-audit information request (PAIR), and consideration of DOT&PF's self-assessment summary report. The audit team completed the site visit for the second audit April 15–19, 2019.

The audit team appreciates DOT&PF's responsiveness to questions on the status of their corrective actions for the first audit non-compliance and general observations. This report concludes with a status update for FHWA's observations from the first audit report.

The audit team finds DOT&PF in substantial compliance with the terms of the MOU in meeting the responsibilities it has assumed. This report does not identify any non-compliance observations; it does identify six general observations as well as several successful practices.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for highway projects. This program is codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities for NEPA project decisionmaking, the State becomes solely responsible and solely liable for carrying out these obligations in lieu of and without further NEPA-related approval by FHWA.

The FHWA assigned responsibility for making project NEPA approvals and the responsibility for making other related environmental decisions for highway projects to DOT&PF on November 3, 2017, which became effective on November 13, 2017. The MOU specifies those FHWA responsibilities assigned to DOT&PF. Examples of responsibilities DOT&PF has assumed in addition to NEPA include Section 7 consultation under the Endangered Species Act (ESA) and consultation under Section 106 of the National Historic Preservation Act (NHPA).

This is the second of four required annual audits pursuant to 23 U.S.C. 327(g) and Part 11 of the MOU. Audits are the primary mechanism through which FHWA oversees DOT&PF's compliance with the MOU and the NEPA Assignment Program requirements. This includes ensuring compliance with applicable Federal laws and policies, evaluating DOT&PF's progress toward achieving the performance measures identified in Section 10.2 of the MOU, and collecting information needed for the Secretary's annual report to Congress. The FHWA must present the results of each audit in a report and make it available for public comment in the **Federal Register**.

The audit team included NEPA subject matter experts from FHWA offices in Juneau, Alaska; Washington, District of Columbia; Atlanta, Georgia; Sacramento, California; and Lakewood, Colorado.

Scope and Methodology

The audit team examined a sample of DOT&PF's NEPA project files, DOT&PF responses to the PAIR, and DOT&PF's Self-Assessment Summary report. The audit team also interviewed DOT&PF staff and reviewed DOT&PF policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements: Program Management; Documentation and Records Management; Quality Assurance/Quality Control (QA/QC); Legal Sufficiency; Training; and Performance Measurement.

Project File Review: To consider DOT&PF staff adherence to program procedures and Federal requirements, the audit team selected a sample of individual project files for which the environmental review had been completed. The audit team did not evaluate DOT&PF's project-specific decisions, but rather compliance with assumed responsibilities and adherence to their own processes and procedures for project-level environmental decision making. The 43 sampled files included Programmatic CEs (actions approved in the regional offices), CEs and Environmental Assessments (EAs) (approved in the Statewide Environmental Office (SEO)), and re-evaluations (approved by the same office as the original environmental document).

PAIR Review: The audit team reviewed the PAIR, which consisted of 61 questions about specific elements in the MOU that DOT&PF must implement. These responses were used to develop specific follow-up questions for the on-site interviews with DOT&PF staff.

DOT&PF Self-Assessment Review: The audit team reviewed DOT&PF's Self-Assessment summary report and used it to develop specific follow-up questions for the on-site interviews with DOT&PF staff. The NEPA Assignment Program MOU Section 8.2.5 requires the DOT&PF to conduct annual self-assessments of its QA/QC procedures and performance.

Interviews: The audit team conducted 18 on-site interviews and 1 phone interview with DOT&PF staff. Interviewees included staff from each of DOT&PF's three regional offices and its SEO. The audit team invited DOT&PF staff, middle management, and executive management to participate in interviews to ensure they represented a diverse range of staff expertise, experience, and program responsibility. In addition, the audit team conducted two phone interviews of attorneys with the Alaska Department of Law and three phone interviews with staff at the U.S. Fish and Wildlife Service (USFWS) Field Office in Anchorage and the Conservation Planning Assistance Branch in Fairbanks.

Policy/Guidance/Manual Review: Throughout the document reviews and interviews, the audit team verified information on DOT&PF's NEPA Assignment Program including DOT&PF policies, guidance, manuals, and reports. This included the Environmental Program Manual (EPM), the NEPA Assignment QA/QC Plan, the NEPA Assignment Program Training Plan, and the NEPA Assignment Self-Assessment Summary report.

Overall Audit Opinion

This report identifies six observations and several successful practices. The audit team finds DOT&PF is substantially in compliance with the provisions of the MOU, has carried out the environmental responsibilities it assumed through the NEPA Assignment Program, and is taking steps to address observations identified in the first audit.

[1] Throughout this report, FHWA uses the term "NEPA Assignment Program" to refer to the program codified at 23 U.S.C. 327 (Surface Transportation Project Delivery Program).

Non-Compliance Observations

The audit team made no non-compliance observations in the second audit.

Observations and Successful Practices

This section summarizes the audit team's observations of DOT&PF's NEPA Assignment Program implementation, and successful practices DOT&PF may want to continue or expand. The audit team has observations which DOT&PF may use to improve processes, procedures, or outcomes. The DOT&PF may have already taken steps to address or improve upon the audit team's observations, but at the time of the audit they appeared to be areas where DOT&PF could make improvements. Successful practices are positive results that FHWA would like to commend DOT&PF on developing. These may include ideas or concepts that DOT&PF has planned but not yet implemented. Successful practices and observations are described under the six MOU topic areas: Program Management, Documentation and Records Management, QA/QC, Training Program, Performance Measures, and Legal Sufficiency.

This audit report provides an opportunity for DOT&PF to take further actions to improve their program. The FHWA will consider the status of areas identified for potential improvement in this audit's observations as part of the scope of the third audit. The third audit report will include a summary discussion that describes progress since this audit.

Program Management

Program Management includes the overall administration of the NEPA Assignment Program. The audit team noted the following successful practices and observations related to Program Management.

Successful Practices

Based on interviews, DOT&PF plans to update the entire EPM on a 2-year cycle. The SEO indicated that in the interval between EPM updates, topic-specific memoranda would be developed in collaboration with the regional DOT&PF offices to address guidance, policy, or procedure change in advance of the 2020 EPM revision.

The FHWA acknowledges DOT&PF's current efforts to develop guidance memoranda in the following areas:

• Floodplains: The DOT&PF identified the need for additional floodplain guidance. The audit team observed that the SEO and some regional staff have varying expectations regarding analysis of floodplain encroachments and QA/QC requirements. The DOT&PF is encouraged to revise the EPM to clarify what technical analyses and reports may be required as part of complete project documentation, particularly in the context of hydraulic analyses.

• Planning and Environment Linkage (PEL): The DOT&PF has issued a request for proposals for a consultant to develop PEL guidance. The audit team found PEL studies were evaluated as actions needing a NEPA review; however PEL studies are not subject to NEPA. The audit team learned through interviews that DOT&PF has several ongoing PEL studies, so guidance will be timely.

The audit team, through its interviews, noted successful DOT&PF collaboration with the USFWS, the National Marine Fisheries Service (NMFS), and the State Historic Preservation Office (SHPO). The SEO leadership stated that agencies are engaged to maintain and improve relationships.

• Interviews with USFWS staff confirmed that USFWS has a good working relationship with DOT&PF. Both DOT&PF regional staff and USFWS desire to have more regular meetings to further improve relationships and accelerate project delivery. Examples of discussion topics include: Developing best management practices, discussing programmatic approaches, and improving scoping documents.

• The DOT&PF Self-Assessment Summary report describes the SEO coordination with NMFS to clarify procedures for biological opinions and has issued a guidance memo to DOT&PF regional offices.

• The SEO and regional Section 106 subject matter experts collaborate with SHPO on concerns, challenges, and compliance issues.

Observation #1: Applicability of Existing Interagency Agreements

Section 5.1.3 of the MOU requires the DOT&PF to work with FHWA and the resource agencies to modify existing interagency agreements within 6 months of the effective date of the MOU. The audit team recognizes that the four different resource agencies' (U.S. Army Corps of Engineers, NMFS, USFWS, and U.S. Soil Conservation Service (now Natural Resources Conservation Service)) Programmatic Agreements (PA) that were executed in 1985 have not been applicable since the DOT&PF implemented the CE Assignment Program (23 U.S.C. 326) in 2009. Therefore, none of these agreements apply to the current NEPA Assignment Program under 23 U.S.C. 327. The DOT&PF staff may find it useful to meet with all its resource agency partners to clarify their roles under the NEPA Assignment Program. Also, if DOT&PF chooses to enter into interagency agreements per Section 5.1.4 of the MOU, DOT&PF may develop provisions that make the program more efficient and clarify the State's role as decisionmaker.

Observation #2: DOT&PF Delegation of Authority for NEPA Approvals

Section 3.3.1 of the MOU requires DOT&PF to make NEPA approvals (CE determinations, findings of no significant impact, or records of decision). Project file reviews and interviews conducted for this audit revealed inconsistencies regarding the delegation of NEPA approvals within DOT&PF. Although interviews with SEO staff indicated SEO has a written blanket delegation of signature authority for the office, interviews with DOT&PF regional offices revealed variability in procedures for Regional Environmental Managers (REMs) to delegate their approval authority. Some of the project files the team reviewed contained emails that addressed the delegation of approval authority for that project while other project files did not. The review team encourages DOT&PF to review and standardize its procedures for delegation of authority for NEPA approvals to clarify approval responsibility and minimize risk of individuals making NEPA approvals without authorization.

Observation #3: Staff Capacity

Sections 4.2.1. and 4.2.2. of the MOU outline the requirements for the State's commitment of resources and adequate organizational and staff capability. The audit team learned through interviews that SEO and some regional offices have had moderate to high staff turnover since the MOU took effect. Several of the recent SEO leadership staff have retired or been promoted. This issue is a recurrence from Audit #1 (see Audit #1, report Observation #3). Under the MOU, DOT&PF must maintain ''adequate'' organizational and staff capability, including appropriate environmental, technical, legal, and managerial expertise to perform its assumed responsibilities under this MOU and applicable Federal laws. Although any determination of adequacy is a challenge given the expectation for normal staff turnover, DOT&PF could consider monitoring the State's requirement under the MOU to maintain organizational and staff capacity, as well as potential staff adequacy risks to the program. We encourage DOT&PF leadership to assess the adequacy of organizational and staff capacity annually. This assessment would help the State demonstrate that DOT&PF is actively evaluating its commitment of resources with respect to this MOU requirement.

Documentation and Records Management

From March 1, 2018, through October 30, 2018, DOT&PF made 161 project decisions (*e.g.,* Section 4(f) approvals) and NEPA approvals. By employing both judgmental and random sampling methods, the audit team reviewed NEPA project documentation for 43 of these decisions/approvals.

Observation #4: Documentation of Environmental Commitments

Section 5.1.1 of the MOU requires the State to follow Federal laws, regulations, policy, and procedures to implement the responsibilities assumed. Project file reviews and interviews conducted for this audit revealed inconsistencies regarding how DOT&PF documents environmental commitments and ensures that environmental commitments made during the NEPA process are carried through the project development process and into construction. Interviews with DOT&PF regional offices and SEO contained specific questions about environmental commitments. Reponses revealed varying regional office staff opinions regarding Environmental Impact Analyst (Analyst) and REM responsibilities related to commitments and SEO concern with the transference process from NEPA through design and into construction. To address an issue with environmental commitments identified in an earlier program review by the Alaska Division, DOT&PF developed a short-term corrective action to prepare written guidance that would be implemented no later than December 31, 2018. This written guidance has been drafted, but not implemented as of April 15–19, 2019, the week of the audit site visit.

Quality Assurance/Quality Control

Under the MOU, DOT&PF agreed to carry out regular QA/QC activities to ensure the assumed responsibilities are conducted in accordance with applicable law and the MOU. The audit team noted the following successful practices and observations related to QA/QC.

Successful Practices

Analysts in the DOT&PF south coast region have a role in the QA/QC process, as they conduct peer reviews of the documentation in their project files. This encourages consistency in the project review process among Analysts and functions as a valuable training opportunity so that all Analysts can recognize errors and omissions.

The REMs and SEO staff stated that collaboration among regional staff, SEO, and legal staff during development of draft environmental documents, where it occurred, improved document quality. Further, they stated this reduced the number of errors found during formal QA/QC and when reviewing project files during DOT&PF's Self-Assessment.

Once DOT&PF implements its Comprehensive Environmental Data and Reporting (CEDAR) System, DOT&PF stated that the system should eliminate inconsistencies in project name, project identifiers and environmental documentation which DOT&PF also identified as a potential issue in its Self-Assessment Summary report. By transferring project information from another State system, CEDAR should provide a system control that enhances data integrity.

Observation #5: Inconsistency in Project Termini and Statewide Transportation Improvement Program (STIP)

Section 3.3.1 of the MOU requires DOT&PF, at the time of NEPA approval (CE determination, finding of no significant impact, or record of decision), to ensure that the project's design concept, scope, and funding is consistent with current planning documents. The audit team's document review of a sample of projects found one project file with an inconsistency between project termini shown in a project plan and that described in the STIP. The DOT&PF's Self-Assessment found similar inconsistencies. This was observed both for programmatic CEs (approved at the region level) and non-programmatic CEs (approved at the SEO level) that are required to undergo a QC review by REMs in accordance with Section 3.3.2 of the EPM. To help eliminate these types of inconsistencies, DOT&PF may want to consider providing additional tools to REMs for use when approving environmental documents, such as a checklist of items to be verified.

Training

Under Part 12 of the MOU, DOT&PF committed to implementing training necessary to meet its environmental obligations assumed under the NEPA Assignment Program. The DOT&PF also committed to assessing its need for training, developing a training plan, and updating the training plan on an annual basis in consultation with FHWA and other Federal agencies as appropriate.

Successful Practices

The SEO worked with a consultant to customize an advanced NEPA training based on the Alaska NEPA Assignment Program to make it specific for issues typically encountered in Alaska.

The DOT&PF south coast region uses a memorandum to serve as a part of all new employee's orientation and as a precursor to more formal training. The REM issues it to all new Analysts. This memorandum outlines to whom the new employees should talk in their first 2 weeks to help firmly establish relationships and gain an overview of environmental program components.

All DOT&PF regional offices implement individual coaching and on-the-job training practices, which are important mechanisms by which Analysts, especially new Analysts, acquire some of the knowledge and skills necessary to perform their job functions.

Observations

Observation #6: Training Plan Update

Section 12.2 of the MOU commits DOT&PF and FHWA to update the DOT&PF training plan annually in consultation with other Federal agencies as appropriate. The DOT&PF's Training Plan had not yet been updated as of the date of the site visit. The audit team encourages the State to re-evaluate its entire plan for training in light of its budget limitations, so that there is a realistic means of delivering necessary training, especially for new staff. The State may consider further leveraging its Web-based training capabilities to meet training needs.

Performance Measures

The MOU's inclusion of performance measures for the DOT&PF to develop and track progress fits well within FHWA's overall approach to have programs define specific goals that could be measured by existing data or by combinations or indexes of existing data. For example, in recent years, FHWA has promulgated performance measure requirements in support of National Performance Management for freight programs (January 18, 2017), pavement and bridge condition (January 18, 2018), as well as for FHWA's Offices of Safety (March 15, 2016), and Operations (May 2012). In each of these cases, as well as for the FHWA Strategic Plan, there is a requirement for the development and definition of objectives/goals and indicators/measures of overall program performance.

According to Part 10 of the MOU, DOT&PF will report its progress toward meeting its performance measures in the self-assessment summary that is considered by FHWA's audit team. The January 2019 DOT&PF Self-Assessment Summary report identified 13 performance measures for which 2 could not be reported due to lack of a baseline, and 4 measures were based on one approved EA project. Therefore, almost half of the performance measures could not be reported because either no baseline for comparison was developed or the measure was constrained to apply only to EA or Environmental Impact Statement (EIS) projects, even though more than 95 percent of NEPA approvals were CEs.

Legal Sufficiency

During the audit period, one attorney from the Alaska Department of Law (DOL) Transportation Section continued to be assigned to the NEPA Assignment Program. The assigned attorney has significant experience with Federal-aid highway projects and the Federal environmental process. The attorney works directly with DOT&PF staff on project environmental documents. Based on the interviews, the review process followed the standard set forth in the EPM, with the attorney involved early in project development, normally reviewing NEPA documents prior to their circulation to resource agencies for comment. During the audit period, the attorney reviewed three EAs and multiple re-evaluations of an older EIS. The attorney did not issue a formal finding of legal sufficiency during the audit period, as he did not review a Final EIS or Section 4(f) Evaluation (per 23 CFR 771.125[b] or 774.7[d]) during that time.

The DOL management stated that while only one attorney is currently assigned to the program, should workload increase significantly, DOL would assign another attorney to NEPA work.

Status of Observations From Audit #1 (April 2018)

This section describes the actions DOT&PF has taken (or is taking) in response to audit observations, including non-compliance observations made during the first audit. Any non-compliance observations require DOT&PF to take corrective action.

Non-Compliance Observation #1: Ensure an Opportunity for a Public Hearing is Provided When Required. The DOT&PF responded that FHWA's non-compliance observation was made prior to the completion of the DOT&PF's EPM (February 2018). Based on the current edition of the EPM, the requirements for public hearing based on project type are adequately documented and no additional instances of non-compliance were found by the audit team during the second audit. The FHWA has found the corrective action to be satisfactory in addressing the non-compliance observation.

Observation #1: Programmatic Section 106 compliance and Section 4(f) compliance. The DOT&PF recognized possible risk in applying its Section 106 programmatic agreement (PA) to projects that require integration of the Section 106 process with Section 4(f) requirements. To address this risk, SEO consulted with SHPO and created a letter of agreement to provide DOT&PF's notification to SHPO of the intent to make a *de minimis* determination on a project processed under the Section 106 PA as a streamlined review/programmatic allowance. In this audit, the team did not identify instances where the streamlined Section 106 form had been used to support a Section 4(f) use.

Observation #2: Lack of a Process to Implement Planning Consistency at Time of a NEPA Decision. In response to this observation, DOT&PF stated that the project manager is responsible to review and document the availability of funding per Section 420.1.1 of the Preconstruction Manual and that this information is communicated to environmental staff through Section 1.1.1 of the EPM. The DOT&PF also referenced Section 1.3.1 of the EPM in supporting the planning consistency requirements. However, the audit team found an inconsistency regarding a project's termini as shown in a project plan and how that project was described in the STIP. This was identified as an observation in this audit (Observation #5). The audit team recognizes that DOT&PF's manuals offer general guidance, but may want to consider providing additional tools to REMs for use when approving environmental documents, such as a checklist of items to be verified to ensure consistency with transportation plans.

Observation #3: Staff Capacity, Workload, and Turnover. During Audit #1, several DOT&PF staff explained through interviews, that since the State's entry into the full NEPA Assignment Program, staff's required review and documentation efforts dramatically increased, and because of the increased workload, the region office did not have sufficient resources to manage the workload associated with the NEPA Assignment Program. The DOT&PF stated as part of its responses for this audit that it has adequate staffing, continually monitors the number of environmental documents in development, and discusses regional workloads during the weekly NEPA manager's meetings. Through interviews, the team learned that if an individual region experiences an unusually large workload and reports it to SEO, projects would be distributed among NEPA managers. However, based on interviews conducted for this audit, workload for some staff remains a concern.

Observation #4: Government-to-Government Consultation Protocol. The DOT&PF has committed to conducting Tribal consultation in its program Section 106 PA. The DOT&PF's EPM also identifies a process for coordinating with Tribes that is sensitive to any request for Government-to-Government consultation. The DOT&PF leadership indicated that staff have received training, and is using monthly Cultural Resources Team (CRT) meetings to increase staff understanding of the Government-to-Government process.

Observation #5: Section 106 Compliance and Effect Determination. The DOT&PF examined and corrected the project-specific issues. It also indicated that it held a Section 106 training for environmental analysts in June of 2018, created specifically for Alaska DOT&PF by a consultant with input from SEO staff. The cross-regional CRT, which includes the SHPO office DOT&PF liaison, meets on a monthly basis to discuss Section 106 procedures and compliance. The CRT was recognized by the DOT&PF Commissioner during the last audit year for outstanding team performance.

Observation #6: Identify QC staff roles and responsibilities in the DOT&PF's QA/QC Plan. The DOT&PF has defined the roles of the Project Development Team members in the EPM manual and QA/QC Plan (EPM Sections 4.3, 5.4, 11.3, and 11.4) when project development teams are used.

Observation #7: Consider ways to accommodate training needs and timely delivery. The DOT&PF has hired consultants to develop interactive online training, and deliver in-person training to the regional offices. In-person training was conducted in June, October, November of 2018, and February 2019. This training included Section 106, Section 4(f), and the Alaska National Interest Lands Conservation Act. In addition, training is being offered in multiple formats: Manual review including the EPM, online courses, on-the-job training, and mentoring.

Finalization of Report

The FHWA received comments on the draft report from the American Road & Transportation Builders Association (ARTBA). The ARTBA's comments were supportive of the Surface Transportation Project Delivery Program and did not relate specifically to audit 2. The team has considered these comments in finalizing this audit report. This notice makes available the final report of DOT&PF's second audit under the program.

[FR Doc. 2020–14004 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6480; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0106; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0159; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0005; FMCSA–2014–0007; FMCSA–2015–0348; FMCSA–2016–0027; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2016–0030; FMCSA–2018–0012; FMCSA–2018–0014]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 32 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before July 30, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1999–6480, Docket No. FMCSA–2006–24015, Docket No. FMCSA–2006–24783, Docket No. FMCSA–2008–0106, Docket No. FMCSA–2010–0082, Docket No. FMCSA–2010–0114, Docket No. FMCSA–2011–0379, Docket No. FMCSA–2012–0104, Docket No. FMCSA–2012–0159, Docket No. FMCSA–2014–0002, Docket No. FMCSA–2014–0003, Docket No. FMCSA–2014–0005, Docket No. FMCSA–2014–0007, Docket No. FMCSA–2015–0348, Docket No. FMCSA–2016–0027, Docket No. FMCSA–2016–0028, Docket No. FMCSA–2016–0029, Docket No. FMCSA–2016–0030, Docket No. FMCSA–2018–0012, or Docket No. FMCSA–2018–0014 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://;www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 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, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 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 Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1999–6480; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0106; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0159; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0005; FMCSA–2014–0007; FMCSA–2015–0348; FMCSA–2016–0027; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2016–0030; FMCSA–2018–0012; FMCSA–2018–0014), 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 *http://www.regulations.gov,* put the docket number, FMCSA–1999–6480; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0106; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0159; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0005; FMCSA–2014–0007; FMCSA–2015–0348; FMCSA–2016–0027; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2016–0030; FMCSA–2018–0012; FMCSA–2018–0014, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' 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. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1999–6480; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0106; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0159; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0005; FMCSA–2014–0007; FMCSA–2015–0348; FMCSA–2016–0027; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2016–0030; FMCSA–2018–0012; FMCSA–2018–0014, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket

Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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 Docket Operations.

C. Privacy Act

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

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 statute also allows 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 vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 32 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), 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 32 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 64 FR 68195; 65 FR 20251; 67 FR 17102; 69 FR 17267; 71 FR 14567; 71 FR 16410; 71 FR 30228; 71 FR 32183; 71 FR 41310; 73 FR 28186; 73 FR 28187; 73 FR 35197; 73 FR 35199; 73 FR 35200; 73 FR 35201; 73 FR 36955; 73 FR 48275; 75 FR 25917; 75 FR 27623; 75 FR 34210; 75 FR 36779; 75 FR 39729; 75 FR 44051; 75 FR 47888; 77 FR 15184; 77 FR 27847; 77 FR 27850; 77 FR 29447; 77 FR 36336; 77 FR 36338; 77 FR 38384; 77 FR 38386; 77 FR 40945; 77 FR 46153; 77 FR 46795; 79 FR 10611; 79 FR 14571; 79 FR 22003; 79 FR 27043; 79 FR 27681; 79 FR 28588; 79 FR 29495; 79 FR 35218; 79 FR 35220; 79 FR 38649; 79 FR 38659; 79 FR 38661; 79 FR 40945; 79 FR 46153; 79 FR 53514; 81 FR 6573; 81 FR 26305; 81 FR 28136; 81 FR 28138; 81 FR 39320; 81 FR 42054; 81 FR 45214; 81 FR 66720; 81 FR 66722; 81 FR 66724; 81 FR 66726; 81 FR 77173; 81 FR 90050; 81 FR 91239; 81 FR 96196; 83 FR 6919; 83 FR 24146; 83 FR 28320; 83 FR 28325; 83 FR 28332; 83 FR 33292; 83 FR 34661; 83 FR 45749; 83 FR 54644). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant 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 August and are discussed below. As of August 1, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 15 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 68195; 65 FR 20251; 67 FR 17102; 69 FR 17267; 71 FR 16410; 71 FR 32183; 71 FR 41310; 73 FR 28186; 73 FR 36955; 75 FR 25917; 75 FR 27623; 75 FR 36779; 75 FR 39729; 77 FR 15184; 77 FR 27847; 77 FR 27850; 77 FR 29447; 77 FR 36338; 77 FR 38384; 77 FR 38386; 79 FR 10611; 79 FR 14571; 79 FR 22003; 79 FR 27043; 79 FR 27681; 79 FR 28588; 79 FR 29495; 79 FR 35218; 79 FR 35220; 79 FR 38649; 81 FR 6573; 81 FR 26305; 81 FR 28136; 81 FR 28138; 81 FR 39320; 81 FR 42054; 81 FR 66720; 81 FR 66722; 81 FR 66724; 81 FR 77173; 81 FR 90050; 81 FR 91239; 81 FR 96196; 83 FR 6919; 83 FR 24146; 83 FR 28320; 83 FR 28325; 83 FR 28332; 83 FR 34661; 83 FR 45749):

Daniel A. Bahm (FL),
Felix Barajas Ramirez (IL)
William C. Dempsey, Jr. (MA)
Miguel H. Espinoza (CA)
Troy L. Hargrave (MO)
Timothy B. Hummel (KY)
Darius R. Law (FL)
Randall L. Mathis (AL)
Cody N. McDonnell (OR)
Hassan Ourahou (KY)
Tommy L. Ray, Jr. (AL)
Elston L. Taylor (VA)
Steve A. Taylor (NC)
Ronald L. Walker (FL)
James C. Wechsler (OR)

The drivers were included in docket numbers FMCSA–1999–6480; FMCSA–2006–24783; FMCSA–2010–0082; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0005; FMCSA–2015–0348; FMCSA–2016–0027; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2018–0012. Their exemptions are applicable as of August 1, 2020, and will expire on August 1, 2022.

As of August 6, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 36336; 77 FR 46795; 79 FR 38661; 81 FR 90050; 83 FR 34661):

Jay Turner (OH)

The driver was included in docket number FMCSA–2012–0059. The exemption is applicable as of August 6, 2020, and will expire on August 6, 2022.

As of August 8, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 38659; 79 FR 53514; 81 FR 90050; 83 FR 34661):

Jimmy A. Baker (TX); David L. Miller (OH); and Cory J. Tivnan (WA)

The drivers were included in docket number FMCSA–2014–0007. Their exemptions are applicable as of August 8, 2020, and will expire on August 8, 2022.

As of August 9, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (75 FR 34210; 75 FR 47888; 77 FR 40945; 79 FR 40945; 81 FR 90050; 83 FR 34661):

Mark S. Berkheimer (PA); Michael A. Jabro (MI); and Buddy W. Myrick (TX)

The drivers were included in docket number FMCSA–2010–0114. Their exemptions are applicable as of August 9, 2020, and will expire on August 9, 2022.

As of August 12, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 45214; 81 FR 66726; 83 FR 34661):

Roger S. Orr (IA) and Keith R. Tyler (NC)

The drivers were included in docket number FMCSA–2018–0014. Their exemptions are applicable as of August 12, 2020, and will expire on August 12, 2022.

As of August 17, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (83 FR 33292; 83 FR 54644):

Joseph P. Markley (PA) and Curtis C. Williams (MO)

The drivers were included in docket number FMCSA–2018–0014. Their exemptions are applicable as of August 17, 2020, and will expire on August 17, 2022.

As of August 18, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (71 FR 14567; 71 FR 30228; 73 FR 28187; 73 FR 35197; 73 FR 35199; 73 FR 35200; 73 FR 35201; 73 FR 48275; 75 FR 44051; 77 FR 46153; 79 FR 46153; 81 FR 90050; 83 FR 34661):

Steven G. Harter (OR)
Robert W. McMillian (MA)
Ryan J. Reimann (WI)
Brandon J. See (IA)
Ricky L. Shepler (PA)
Nils S. Thornberg (OR)

The drivers were included in docket numbers FMCSA–2006–24015 and FMCSA–2008–0106. Their exemptions are applicable as of August 18, 2020, and will expire on August 18, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. 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.

VI. Conclusion

Based upon its evaluation of the 32 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. 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. 2020–14047 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0025]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on June 18, 2020. The exemptions expire on June 18, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 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 Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0025* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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 Docket Operations.

B. Privacy Act

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

II. Background

On May 19, 2020, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (85 FR 30009). The public comment period ended on June 18, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 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 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

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 statute also allows 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 Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR part 391 to FMCSA; and (3) each driver is 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.

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 11 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Joshua Affholter (MI)
Gantulga Badarach (IL)
Awash Demoz (MD)
Daniel DeSimone (MD)
Muhammad Javed (IN)
Charles O'Bryan (NY)
Darrell Pfaff (TX
Juan Reyes, Jr. (TX)
Steven Rice (NY)
Anna Ruiz (AZ)
Kyle Taylor (GA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–14048 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–2001–11426; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2004–17195; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0303; FMCSA–2009–0321; FMCSA–2010–0050; FMCSA–2011–0298; FMCSA–2011–0378; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2012–0040; FMCSA–2012–0104; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0348; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2017–0028; FMCSA–2018–0011]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 58 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 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 Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1999–5578; FMCSA–2001–11426; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2004–17195; FMCSA–2005–23099; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0303; FMCSA–2009–0321; FMCSA–2010–0050; FMCSA–2011–0298; FMCSA–2011–0378; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2012–0040; FMCSA–2012–0104; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0348; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2016–0025; FMCSA–2016–0027; FMCSA–2017–0028; FMCSA–2018–0011, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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 Docket Operations.

B. Privacy Act

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

II. Background

On May 7, 2020, FMCSA published a notice announcing its decision to renew exemptions for 58 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (85 FR 27264). The public comment period ended on June 8, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 58 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

As of June 2, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 40 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027; 64 FR 51568; 66 FR 48504; 67 FR 10471; 67 FR 19798; 68 FR 54775; 68 FR 61860; 68 FR 74699; 68 FR 75715; 69 FR 10503; 69 FR 19611; 70 FR 53412; 71 FR 6829; 71 FR 16410; 71 FR 19604; 72 FR 39879; 72 FR 52419; 72 FR 62896; 73 FR 8392; 73 FR 11989; 73 FR 15567; 73 FR 27014; 73 FR 27015; 74 FR 41971; 74 FR 43222; 75 FR 1451; 75 FR 1835; 75 FR 8184; 75 FR 9482; 75 FR 13653; 75 FR 19674; 75 FR 27622; 76 FR 54530; 76 FR 70213; 76 FR 75942; 77 FR 541; 77 FR 7233; 77 FR 10606; 77 FR 17107; 77 FR 17115; 77 FR 19749; 77 FR 22838; 77 FR 23797; 77 FR 26816; 78 FR 34143; 78 FR 47818; 78 FR 52602; 78 FR 63302; 78 FR 63307; 78 FR 64274; 78 FR 67454; 78 FR 76705; 78 FR 77778; 78 FR 77780; 78 FR 78477; 79 FR 1908; 79 FR 4803; 79 FR 6993; 79 FR 10606; 79 FR 10607; 79 FR 10608; 79 FR 14328; 79 FR 14331; 79 FR 14333; 79 FR 14571; 79 FR 15794; 79 FR 17641; 79 FR 18391; 79 FR 18392; 79 FR 22003; 79 FR 23797; 79 FR 28588; 79 FR 29498; 80 FR 48402; 80 FR 67472; 80 FR 67481; 80 FR 70060; 80 FR 80443; 81 FR 6573; 81 FR 11642; 81 FR 15401; 81 FR 16265; 81 FR 17237; 81 FR 20433; 81 FR 20435; 81 FR 21647; 81 FR 21655; 81 FR 26305; 81 FR 28136; 81 FR 52516; 81 FR 66718; 81 FR 66724; 81 FR 66731; 81 FR 91239; 83 FR 2306; 83 FR 4537; 83 FR 6681; 83 FR 15195; 83 FR 24146; 83 FR 24151; 83 FR 24571; 83 FR 28332):

Stanley W. Ahne (OK)
Ronald D. Boeve (MI)
Samuel S. Byler (PA)
Darrell Canupp (MI)

Mark Castleman (MN)
Valentin S. Chernyy (NE)
Cody W. Christian (OK)
Lee A. DeHaan (SD)
Eric C. Dettrey (NJ)
David L. Dykes (FL)
Shorty M. Ellis (NC)
Robin S. England (GA)
Juan Gallo-Gomez (CT)
Gregory T. Garris (OK)
Jerry L. Gray (AL)
James R. Hammond (OH)
Edward W. Hosier (MO)
Michael J. Hoskins (KS)
Nathan H. Jacobs (NM)
Roger W. Kerns (IA)
Christopher B. Liston (TN)
Michael S. Maki (MN)
Stanley B. Marshall (GA)
Stephen R. Marshall (MS)
Roberto C. Mendez (TX)
Jack D. Miller (OH)
John E. Nichols (PA)
Andrew M. Nurnberg (GA)
Juan C. Ramirez (OH)
Joshua A. Rhynd (ME)
Danny L. Rolfe (ME)
Ryan R. Ross (SC)
John Rueckert (SD)
Mark A. Sanders (OK)
Joseph W. Schmit (NE)
Dale L. Schneider (IA)
Larry W. Slinker (VA)
Richard M. Smith (CO)
James A. Spell (MD)
Marvin S. Zimmerman (PA)

The drivers were included in docket numbers FMCSA–1999–5578; FMCSA–2001–11426; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0321; FMCSA–2011–0298; FMCSA–2011–0378; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0348; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2016–0025; FMCSA–2016–0027; and FMCSA–2017–0028. Their exemptions are applicable as of June 2, 2020, and will expire on June 2, 2022.

As of June 3, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (69 FR 17263; 69 FR 31447; 71 FR 4194; 71 FR 13450; 71 FR 27033; 73 FR 9158; 73 FR 28186; 74 FR 60022; 75 FR 4623; 75 FR 9484; 75 FR 14656; 75 FR 27623; 75 FR 28682; 77 FR 10606; 77 FR 15184; 77 FR 17107; 77 FR 17109; 77 FR 27845; 77 FR 27849; 77 FR 27850; 77 FR 29447; 79 FR 14328; 79 FR 14571; 79 FR 18391; 79 FR 21996; 79 FR 27043; 79 FR 28588; 81 FR 28138; 83 FR 28332):

Ernie E. Black (NC)
Marland L. Brassfield (TX)
Melvin D. Clark (GA)
Rojelio Garcia-Pena (MI)
Stephen H. Goldcamp (OH)
Wai F. King (IL)
Travis J. Luce (MI)
Jason T. Montoya (NM)
Carl D. Short (MO)

The drivers were included in docket numbers FMCSA–2004–17195; FMCSA–2005–23099; FMCSA–2009–0303; FMCSA–2010–0050; FMCSA–2011–0379; FMCSA–2011–0380; and FMCSA–2014–0003. Their exemptions are applicable as of June 3, 2020, and will expire on June 3, 2022.

As of June 6, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 23799; 77 FR 33558; 79 FR 27365; 81 FR 28138; 83 FR 28332):

Richard Doroba (IL)

The driver was included in docket number FMCSA–2012–0040. The exemption is applicable as of June 6, 2020, and will expire on June 6, 2022.

As of June 27, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 27847; 77 FR 38386; 79 FR 29495; 81 FR 28138; 83 FR 28332):

Matthew G. Epps (FL) and James E. Sikkink (IL)

The drivers were included in docket number FMCSA–2012–0104. Their exemptions are applicable as of June 27, 2020, and will expire on June 27, 2022.

As of June 29, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (83 FR 24585; 83 FR 34677):

Joseph W. Davis (NC)
Thomas R. Krentz (MN)
Phil M. Lamp (WV)
Jeffery S. Lathrop (NC)
James B. Powell (IL)
Zebrial C. Stahmer (MT)

The drivers were included in docket number FMCSA–2018–0011. Their exemptions are applicable as of June 29, 2020, and will expire on June 29, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–14045 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0123; FMCSA–2013–0124; FMCSA–2013–0125; FMCSA–2016–0003; FMCSA–2017–0059]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for seven 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 were applicable on May 19, 2020. The exemptions expire on May 19, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 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 Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2012–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2016–0003, or FMCSA–2017–0059, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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 Docket Operations.

B. Privacy Act

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

II. Background

On May 5, 2020, FMCSA published a notice announcing its decision to renew exemptions for seven individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (85 FR 26780). The public comment period ended on June 4, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 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 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the seven renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of May and are discussed below:

As of May 19, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (85 FR 26780):

Forrest Carroll (OH)
Bryan MacFarlane (OH)
Michael Murrah (GA)
Michael Paasch (NE)
Kelly Pulvermacher (WI)
Brian Walthall (KS)
Joshua Chad Weaver (GA)

The drivers were included in docket number FMCSA–2012–0123, FMCSA–2013–0124, FMCSA–2013–0125, FMCSA–2016–0003, and FMCSA–2017–0059. Their exemptions are applicable as of May 19, 2020, and will expire on May 19, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (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 prior to being 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).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–14049 Filed 6–29–20; 8:45 am]

BILLING CODE 4910–EX–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 126 June 30, 2020

Part II

Federal Housing Finance Agency

12 CFR Parts 1206, 1225, and 1240

Department of Housing and Urban Development

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

Enterprise Regulatory Capital Framework; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1206, 1225, and 1240

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2590–AA95

Enterprise Regulatory Capital Framework

AGENCY: Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA or the Agency) is seeking comments on a new regulatory capital framework for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac, and with Fannie Mae, each an Enterprise). The proposed rule would also make conforming amendments to definitions in FHFA's regulations for assessments and minimum capital and would also remove the Office of Federal Housing Enterprise Oversight's (OFHEO) regulation on capital for the Enterprises.

DATES: Comments must be received on or before August 31, 2020.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA95, by any one of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA95.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA95, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA95, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FOR FURTHER INFORMATION CONTACT: Naa Awaa Tagoe, Senior Associate Director, Office of Financial Analysis, Modeling & Simulations, (202) 649–3140, *NaaAwaa.Tagoe@fhfa.gov;* Andrew Varrieur, Associate Director, Office of Financial Analysis, Modeling & Simulations, (202) 649–3141, *Andrew.Varrieur@fhfa.gov;* or Miriam Smolen, Associate General Counsel, Office of General Counsel, (202) 649–3182, *Miriam.Smolen@fhfa.gov.* These are not toll-free numbers. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

Table of Contents

I. Introduction

FHFA is seeking comments on a new regulatory capital framework for the Enterprises. This notice of proposed rulemaking (proposed rule) is a re-proposal of the regulatory capital framework set forth in the notice of proposed rulemaking published in the **Federal Register** on July 17, 2018 (2018 proposal).[1] The 2018 proposal, which remains the foundation of the proposed rule, contemplated risk-based capital requirements based on a granular assessment of credit risk specific to different mortgage loan categories, as well as two alternatives for an updated leverage ratio requirement. With this re-proposal, FHFA is proposing enhancements to establish a post-conservatorship regulatory capital framework that ensures that each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle, in particular during periods of financial stress.[2]

Pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 [3] (Safety and Soundness Act), as amended by the Housing and Economic Recovery Act of 2008 [4] (HERA), the FHFA Director's principal duties include, among other duties, ensuring that each Enterprise operates in a safe and sound manner, that the operations and activities of each Enterprise foster liquid, efficient, competitive, and resilient national housing finance markets, and that each Enterprise carries out its statutory mission only through activities that are authorized under and consistent with the Safety and Soundness Act and its charter.[5] Pursuant to their charters, the statutory purposes of the Enterprises are, among other purposes, to provide stability in, and ongoing assistance to, the secondary market for residential mortgages.[6] Consistent with these statutory duties and purposes, FHFA's enhancements contemplated by the proposed rule are intended to achieve three primary objectives:

- Preserve the mortgage risk-sensitive framework of the 2018 proposal, with simplifications and refinements;
- Increase the quantity and quality of the regulatory capital of the Enterprises to ensure that, during and after conservatorship, each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle; and
- Address the pro-cyclicality of the risk-based capital requirements of the 2018 proposal, also in furtherance of the safety and soundness of the Enterprises and their countercyclical mission.

FHFA believes it is important to re-propose the regulatory capital framework to afford interested parties an opportunity to comment on the enhancements contemplated by the proposed rule in its entirety in light of FHFA's intent to responsibly end the conservatorships of the Enterprises. This policy change is a departure from FHFA's stated policy at the time of the 2018 proposal, when the prospects for indefinite conservatorships might have informed the expectations of interested parties, their decision to comment, and the nature of comments submitted. Despite this, the comments received on the 2018 proposal were valuable and important. FHFA emphasizes that the purpose of the proposed rule is to establish a regulatory capital framework that ensures the safety and soundness of each Enterprise and its ability to fulfill its statutory mission across the economic cycle.

II. Overview of the Proposed Rule

A. Regulatory Capital Requirements

In response to the comments and feedback on the 2018 proposal and in furtherance of FHFA's stated objectives, the regulatory capital framework contemplated by the proposed rule would require each Enterprise to maintain the following risk-based capital:

- Total capital not less than 8.0 percent of risk-weighted assets, determined as described below;
- Adjusted total capital not less than 8.0 percent of risk-weighted assets;
- Tier 1 capital not less than 6.0 percent of risk-weighted assets; and
- Common equity tier 1 (CET1) capital not less than 4.5 percent of risk-weighted assets.

Each Enterprise also would be required to satisfy the following leverage ratios:

- Core capital not less than 2.5 percent of adjusted total assets; and
- Tier 1 capital not less than 2.5 percent of adjusted total assets.

Adjusted total assets would be defined as total assets under generally accepted accounting principles (GAAP), with adjustments to include certain off-balance sheet exposures. Total capital and core capital would have the meaning given in the Safety and Soundness Act. Adjusted total capital, tier 1 capital, and CET1 capital would be defined based on the definitions of total capital, tier 1 capital, and CET1 capital set forth in the regulatory capital framework (the Basel framework) developed by the Basel Committee on Bank Supervision (BCBS) that is the basis for the United States banking regulators' regulatory capital framework (U.S. banking framework). These supplemental regulatory capital definitions would fill certain gaps in the statutory definitions of core capital and total capital by making customary deductions and other adjustments for certain deferred tax assets (DTAs), goodwill, intangibles, and other assets that tend to have less loss-absorbing capacity during a financial stress.

To calculate its risk-based capital requirements, an Enterprise would determine its risk-weighted assets under two approaches—a standardized approach and an advanced approach—with the greater of the two used to determine its risk-based capital requirements. Under both approaches, an Enterprise's risk-weighted assets would equal the sum of its credit risk-weighted assets, market risk-weighted assets, and operational risk-weighted assets.

Under the standardized approach, the credit risk-weighted assets for mortgage loans secured by 1–4 unit residences (single-family mortgage exposures) and mortgage loans secured by five or more unit residences (multifamily mortgage exposures) would be determined using lookup grids and multipliers that assign an exposure-specific risk weight based on the risk characteristics of the mortgage exposure. The underlying exposure-specific credit risk capital requirements generally would be similar to those in the grids and multipliers of the 2018 proposal, subject to some simplifications and refinements discussed in Sections VIII.A and VIII.B.[7]

[1] *FHFA Enterprise Capital Requirements,* 83 FR 33312 (Jul. 17, 2018).

[2] Other enhancements to the Enterprises' supervisory and regulatory framework might also be necessary, for example with respect to the Enterprises' liquidity risk management.

[3] Public Law 102–550, 106 Stat. 3941 (1992).

[4] Public Law 110–289, 122 Stat. 2654 (2008).

[5] 12 U.S.C. 4513(a)(1).

[6] *Id.* sections 1451 note, 1716.

[7] This base risk weight would be equal to the unadjusted credit risk capital requirement for the mortgage exposure expressed in basis points and divided by 800, which is the 8.0 percent adjusted total capital requirement also expressed in basis points. For example, the credit risk capital requirement for a mortgage exposure with a base

Continued

Like the 2018 proposal, the base risk weight would be a function of the mortgage exposure's loan-to-value (LTV) ratio with the property value generally marked to market (MTMLTV). For single-family mortgage exposures, the MTMLTV would be subject to a countercyclical adjustment to the extent that national house prices are 5.0 percent greater or less than an inflation-adjusted long-term trend. For both single-family and multifamily mortgage exposures, this base risk weight would then be adjusted to reflect additional risk attributes of the mortgage exposure and any loan-level credit enhancement, with the associated risk multipliers also generally similar to those of the 2018 proposal. To ensure an appropriate level of capital, this adjusted risk weight would be subject to a minimum floor of 15 percent.

As of September 30, 2019, under the proposed rule's standardized approach, the Enterprises' average risk weight for single-family mortgage exposures would have been 26 percent, and the Enterprises' average risk weight for multifamily mortgage exposures would have been 51 percent.[8] The average risk weights for single-family and multifamily mortgage exposures originated and acquired by an Enterprise in the previous six months would have been approximately 36 percent and 67 percent, respectively.[9]

While the standardized approach would utilize FHFA-prescribed lookup grids and risk multipliers, the advanced approach for credit risk-weighted assets would rely on each Enterprise's internal models. The advanced approach requirements would require each Enterprise to maintain its own processes for identifying and assessing credit risk, market risk, and operational risk. These requirements should ensure that each Enterprise continues to enhance its risk management system and also that neither Enterprise simply relies on the standardized approach's lookup grids and multipliers to define credit risk tolerances, measure its credit risk, or allocate capital. In the course of FHFA's supervision of each Enterprise's internal models for credit risk, FHFA also could identify opportunities to update or otherwise enhance the standardized approach's lookup grids and multipliers in a future rulemaking.

Under both the standardized and advanced approaches, an Enterprise would determine the capital treatment for eligible credit risk transfers (CRT) under a securitization framework by assigning risk weights to retained CRT exposures. Under the standardized approach, tranche-specific risk weights would be subject to a 10 percent floor. The proposed rule seeks comment on two approaches to determining the risk-weighted assets for retained CRT exposures, one of which contemplates adjustments to the exposure amounts of the retained CRT exposures to reflect counterparty risk, loss timing risk, and a general adjustment for the differences between CRT and regulatory capital, and the other of which is based on the U.S. banking framework.

Each Enterprise also would determine a market risk capital requirement for spread risk. Market risks other than spread risk would not be assigned a market risk capital requirement, but FHFA is seeking comment on more comprehensive approaches. Under the standardized approach, an Enterprise would determine its market risk-weighted assets using FHFA-specified formulas for some covered positions and its own models for other covered positions. An Enterprise would separately determine its market risk-weighted assets under an advanced approach that relies only on its own internal models for all covered positions.

The proposed rule also would require each Enterprise to determine its operational risk capital requirement utilizing the U.S. banking framework's advanced measurement approach, subject to a floor equal to 15 basis points of the Enterprise's adjusted total assets.

Each of these risk-based and leverage ratio requirements would be enforceable by FHFA under its general authority to order an Enterprise to cease and desist from a violation of law, which would include the proposed rule and its regulatory capital requirements. Pursuant to that authority, FHFA may require an Enterprise to develop and implement a capital restoration plan or take other appropriate corrective action. FHFA also could elect to enforce the risk-based and leverage ratio requirements pursuant to its authority to require an Enterprise to develop a plan to achieve compliance with prescribed prudential management and operational standards, and FHFA also could enforce the core capital leverage ratio requirement or the risk-based total capital requirement pursuant to its separate authority to require prompt corrective action if an Enterprise fails to maintain certain prescribed regulatory levels.

B. Capital Buffers

To avoid limits on capital distributions and discretionary bonus payments, an Enterprise would have to maintain regulatory capital that exceeds each of its adjusted total capital, tier 1 capital, and CET1 capital requirements by at least the amount of its prescribed capital conservation buffer amount (PCCBA). That PCCBA would consist of three separate component buffers—a stress capital buffer, a countercyclical capital buffer, and a stability capital buffer.

- The stress capital buffer would be 0.75 percent of the Enterprise's adjusted total assets, with this buffer in effect replacing the 2018 proposal's going-concern buffer. The 2018 proposal's going-concern buffer was a part of the Enterprise's total capital requirement, such that an Enterprise would be subject to enforcement action if it drew down this going-concern buffer. In contrast, under the proposed rule, drawing down the stress capital buffer generally would trigger only limits on capital distributions and discretionary bonus payments. By prescribing less severe sanctions for drawing down this buffer during a period of financial stress, the proposed rule's approach should help position an Enterprise to fulfill its statutory mission across the economic cycle and also dampen the pro-cyclicality of the aggregate risk-based capital requirements. FHFA is also seeking comment on whether to periodically re-size the stress capital buffer, similar to the approach recently adopted by the U.S. banking regulators,[10] to the extent that FHFA's eventual program for supervisory stress tests determines that an Enterprise's peak capital exhaustion under a severely adverse stress would exceed 0.75 percent of adjusted total assets.
- The countercyclical capital buffer amount initially would be set at 0 percent of the Enterprise's adjusted total assets. FHFA does not expect to adjust this buffer in the place of, or to supplement, the countercyclical adjustment to the risk-based capital requirements. Instead, as under the Basel and U.S. banking frameworks, FHFA would adjust the countercyclical capital buffer taking into account the macro-financial environment in which the Enterprises operate, such that it

risk weight of 50 percent would be 400 basis points (800 multiplied by 50 percent).

[8] These average risk weights are determined based on the credit risk capital requirement for single-family and multifamily mortgage exposures after adjustments for mortgage insurance and other loan-level credit enhancement but before any adjustment for credit risk transfers.

[9] While not shown, new originations are a subset of the mortgage exposures included in Tables 26 and 29.

[10] *See e.g. Federal Reserve Board Regulations Q, Y, and YY: Regulatory Capital, Capital Plan, and Stress Test Rules Final Rule,* 85 FR 15576 (Mar. 18, 2020).

would be deployed only when excess aggregate credit growth is judged to be associated with a build-up of system-wide risk. This focus on excess aggregate credit growth means the countercyclical buffer likely would be deployed on an infrequent basis, and generally only when similar buffers are deployed by the U.S. banking regulators.

• An Enterprise's stability capital buffer would be tailored to the risk that the Enterprise's default or other financial distress could have on the liquidity, efficiency, competitiveness, or resiliency of national housing finance markets. FHFA is proposing a stability capital buffer based on the Enterprise's share of residential mortgage debt outstanding, and seeking comment on an alternative based on the U.S. banking framework's methodology. Under either methodology, the stability capital buffer would be a percent of adjusted total assets. Under the market share approach, as of September 30, 2019, Freddie Mac's and Fannie Mae's stability capital buffers would have been, respectively, 0.64 and 1.05 percent of adjusted total assets.

Fixing the PCCBA at a specified percent of an Enterprise's adjusted total assets, instead of risk-weighted assets, is a notable departure from the Basel framework. FHFA intends a fixed-percent PCCBA, among other things, to reduce the impact that the PCCBA potentially could have on higher risk exposures, to avoid amplifying the secondary effects of any model or similar risks inherent to the calibration of granular risk weights for mortgage exposures, and to further mitigate the pro-cyclicality of the aggregate risk-based capital requirements.

Finally, to avoid limits on capital distributions and discretionary bonus payments, the Enterprise also would be required to maintain tier 1 capital in excess of the amount required under its tier 1 leverage ratio requirement by at least the amount of its prescribed leverage buffer amount (PLBA). The PLBA would equal 1.5 percent of the Enterprise's adjusted total assets, such that the PLBA-adjusted leverage ratio requirement would remain a credible backstop to the PCCBA-adjusted risk-based capital requirements.

C. Key Enhancements

The proposed rule contemplates a number of key enhancements to the 2018 proposal, including:

• Simplifications and refinements of the grids and risk multipliers for the credit risk capital requirements for single-family mortgage exposures, including removal of the single-family risk multipliers for loan balance and the number of borrowers.

• A countercyclical adjustment to the credit risk capital requirements for single-family mortgage exposures.

• A prudential floor on the credit risk capital requirement for mortgage exposures.

• Refinements to the capital treatment of CRT structures, including a minimum capital requirement on senior tranches of CRT retained by an Enterprise and an adjustment to reflect that CRT does not have the same loss-absorbing capacity as equity capital.

• The addition of a credit risk capital requirement for Enterprise crossholdings of mortgage-backed securities (MBS).

• Risk-based capital requirements for a number of other exposures not explicitly addressed by the 2018 proposal.

• Supplemental capital requirements based on the Basel framework's definitions of total capital, tier 1 capital, and CET1 capital.

• Capital buffers that would subject an Enterprise to increasing limits on capital distributions and discretionary bonus payments to the extent that its regulatory capital falls below the prescribed buffer amounts.

• A stability capital buffer tailored to the risk that an Enterprise's default or other financial distress could have on the liquidity, efficiency, competitiveness, and resiliency of national housing finance markets.

• A revised method for determining operational risk capital requirements, as well as a higher floor.

• A requirement that each Enterprise maintain internal models for determining its own estimates of risk-based capital requirements.

D. Sizing of Regulatory Capital Expectations

1. Aggregate Regulatory Capital

Table 1 details how much regulatory capital the Enterprises together would have been required to maintain under the proposed rule as of September 30, 2019 to avoid restrictions on capital distributions and discretionary bonus payments.[11]

[11] The analogous breakdown of requirements by Enterprise is included in Section XII.A.

Table 1: Summary of Risk-Based Capital Requirements for Fannie Mae and Freddie Mac Combined as of September 30, 2019

Enterprises Combined

Risk-based Capital Requirements

$ in billions	Total Capital (Statutory)	CET1	Tier 1	Adjusted Total Capital
Capital Requirement	$135	$76	$101	$135
Prescribed Buffers				
Stress Capital Buffer		46	46	46
Stability Capital Buffer		53	53	53
Countercyclical Capital Buffer Amount		0	0	0
Prescribed Capital Conservation Buffer Amount (PCCBA)	0	99	99	99
Requirement and PCCBA	$135	$175	$200	$234

Leverage Capital Requirements

	Core Capital (Statutory)	Tier 1
Capital Requirement	$152	$152
Prescribed Leverage Buffer Amount (PLBA)	0	91
Requirement and PLBA	$152	$243

Table 1 shows a combined Enterprise statutory total risk-based capital requirement of $135 billion (8 percent of risk-weighted assets). The statutory risk-based capital framework does not include any capital buffers. In contrast, the supplementary risk-based capital framework includes three capital requirements (CET1, tier 1, and adjusted total capital) along with three capital buffers (countercyclical, stress capital, and stability) that comprise the PCCBA. While the capital buffers are not strictly a capital requirement, they would materially increase the regulatory capital that each Enterprise would have to maintain to avoid restrictions on capital distributions and discretionary bonuses.

Focusing on high-quality capital, the combined Enterprise CET1 capital requirement was $76 billion (4.5 percent of risk-weighted assets), the tier 1 capital requirement was $101 billion (6 percent of risk-weighted assets), and the adjusted total capital requirement was $135 billion (8 percent of risk-weighted assets). The combined PCCBA was $99 billion, comprising the $46 billion stress capital buffer, $53 billion stability capital buffer, and $0 countercyclical capital buffer. The capital requirements and PCCBA totaled $175 billion for CET1 capital, $200 billion for tier 1 capital, and $234 billion for adjusted total capital. A more nuanced look at the importance of high-quality capital, and specifically how the Enterprises' supplemental capital measures would have evolved in relation to their statutory capital measures leading up to the 2008 financial crisis, is included in Section III.B.3.

Table 1 then shows a combined leverage ratio requirement of $152 billion under the proposed rule. Both the core capital and supplementary tier 1 leverage ratio requirements are equal to 2.5 percent of adjusted total assets, so there is no difference between the two leverage ratio requirements. However, there are important differences between core capital and tier 1 capital related to the loss-absorbing capacity of each capital metric, as discussed in Section V.B.

The supplementary framework also includes a tier 1 capital PLBA equal to 1.5 percent of adjusted total assets, or $91 billion for the Enterprises combined. In aggregate, the Enterprises' combined tier 1 leverage ratio requirement and PLBA would have been $243 billion as of September 30, 2019.

2. 2018 Proposal's Capital Requirements

Table 2 presents estimates of the Enterprises' combined regulatory capital under the proposed rule broken out by risk category and asset category as of September 30, 2019. Table 2 also presents estimates of the Enterprises' combined capital requirements under the 2018 proposal, both as of September 30, 2017—the as-of date in the 2018 proposal—and as of September 30, 2019.[12]

[12] A more detailed walk-forward from the capital requirements in the 2018 proposal to the capital requirements under the proposed rule is presented for each Enterprise in Section XII.

Table 2: Comparison of Risk-Based Capital Requirements for Fannie Mae and Freddie Mac Combined under the 2018 Proposal and the Proposed Rule, by Risk Category

Enterprises Combined	2018 Proposal As of				Proposed Rule As of		
	9/30/2017		9/30/2019		9/30/2019		
	$ in billions	% of Total	$ in billions	% of Total	$ in billions	% of Total	% of Adjusted Total Assets
Gross Credit Risk			$127.0		$151.9		2.50%
Loan-Level Credit Enhancement			(17.9)		(17.0)		(0.28%)
Net Credit Risk	$112.0		$109.1		$134.9		2.22%
CRT Impact, net	(21.5)		(41.3)		(22.1)		(0.36%)
Post-CRT Net Credit Risk	90.5	50%	67.8	50%	112.8	84%	1.86%
Market Risk	19.4	11%	13.6	10%	13.6	10%	0.22%
Going-Concern Buffer	39.9	22%	43.5	32%	0.0	0%	0.00%
Operational Risk	4.3	2%	4.6	3%	8.7	6%	0.14%
Deferred Tax Assets	26.7	15%	7.4	5%	0.0	0%	0.00%
Total Capital Requirement	$180.9	100%	$136.9	100%	$135.1	100%	2.22%
Prescribed Buffers							
Stress Capital Buffer					45.5		0.75%
Stability Capital Buffer					53.3		0.88%
Countercyclical Capital Buffer Amount					0.0		0.00%
Prescribed Capital Conservation Buffer Amount (PCCBA)					98.8		1.63%
Total Capital Requirement and PCCBA	$180.9		$136.9		$233.9		3.85%
Adjusted Total Assets	$5,619.9		$6,072.0		$6,072.0		
Total Capital Requirement and PCCBA/ Adjusted Total Assets	3.22%		2.25%		3.85%		

Table 2 shows an estimated combined risk-based capital requirement of $135.1 billion, or 2.22 percent of the Enterprises' adjusted total assets, under the proposed rule as of September 30, 2019, then provides a further breakdown by risk category. Net credit risk capital accounts for $134.9 billion before CRT and $112.8 billion after CRT, market risk capital accounts for $13.6 billion, and operational risk capital accounts for $8.7 billion. The DTA requirement is zero as of September 30, 2019.

Using the same September 30, 2019 portfolio date, the combined risk-based capital requirement under the 2018 proposal would have been similar to the combined risk-based capital requirement under the proposed rule. The differences in required regulatory capital between the two proposals are in post-CRT net credit risk capital (+45.0 billion), removal of the going-concern buffer (−$43.5 billion), operational risk (+$4.1 billion), and DTA (−$7.4 billion). The capital requirement for market risk was unchanged. Primary drivers of the $45.0 billion increase in post-CRT net credit risk capital are a new prudential floor on the credit risk capital requirement for mortgage exposures and refinements to the capital treatment of CRT structures, including a minimum capital requirement on senior tranches of CRT retained by an Enterprise. A caveat to this comparison is that the 2018 proposal increased the total capital requirement by a DTA offset, while the proposed rule, consistent with the Basel framework, proposes instead to deduct the amount of that DTA offset from CET1 capital (and therefore tier 1 and adjusted total capital). The 2018 proposal's $136.9 billion combined risk-based capital requirement would have been, in effect, $129.5 billion under the DTA approach of the proposed rule.

In contrast to the 2018 proposal, the proposed rule includes a set of three buffers that would materially increase the regulatory capital that each Enterprise would have to maintain to avoid restrictions on capital distributions and discretionary bonuses. The proposed rule's stress capital buffer of $45.5 billion replaces the 2018 proposal's $43.5 billion going-concern buffer, and is complemented by the stability capital buffer of $53.3 billion and the countercyclical capital buffer that is currently set to zero. The three buffers in aggregate form the PCCBA, which totals $98.8 billion for the Enterprises combined, or 1.63 percent of the adjusted total assets. The aggregate risk-based capital requirement and PCCBA is a combined $234.3 billion under the proposed rule, or 3.86 percent of the Enterprises' adjusted total assets.

Table 3: Comparison of Risk-Based Capital Requirements for Fannie Mae and Freddie Mac Combined under the 2018 Proposal and the Proposed Rule, by Asset Category

Enterprises Combined	2018 Proposal As of				Proposed Rule As of		
	9/30/2017		9/30/2019		9/30/2019		
	$ in billions	% of Total	$ in billions	% of Total	$ in billions	% of Total	% of Adjusted Total Assets
Single-family excluding Going-Concern Buffer	$95.6	53%	67.8	49%			
Single-family Going-Concern Buffer	34.9	19%	36.9	27%			
Single-family	130.5	72%	104.7	76%	$111.0	82%	1.83%
Multifamily excluding Going-Concern Buffer	10.2	6%	12.2	9%			
Multifamily Going-Concern Buffer	3.7	2%	4.7	3%			
Multifamily	13.9	8%	16.9	12%	17.8	13%	0.29%
Deferred Tax Assets	26.8	15%	7.4	5%	0.0	0%	0.00%
Other Assets excluding Going-Concern Buffer*	8.4	5%	6.1	4%			
Other Assets Going-Concern Buffer	1.3	1%	1.8	1%			
Other Assets	9.7	5%	7.9	6%	6.3	5%	0.10%
Total Capital Requirement	$180.9	100%	$136.9	100%	$135.1	100%	2.22%
Prescribed Buffers							
Stress Capital Buffer					45.5		0.75%
Stability Capital Buffer					53.3		0.88%
Countercyclical Capital Buffer Amount					0.0		0.00%
Prescribed Capital Conservation Buffer Amount (PCCBA)					$98.8		1.63%
Total Capital Requirement and PCCBA	$180.9		$136.9		$233.9		3.85%
Adjusted Total Assets	$5,619.9		$6,072.0		$6,072.0		
Total Capital Requirement and Buffer Target/ Adjusted Total Assets	3.22%		2.25%		3.85%		

*Includes PLS, CMBS, Other.

Table 3 again shows an estimated combined risk-based capital requirement of $135.1 billion, or 2.22 percent of the Enterprises' adjusted total assets under the proposed rule as of September 30, 2019, then provides a further breakdown by asset category. The Enterprises' combined risk-based capital requirement for single-family mortgage exposures is $111.0 billion under the proposed rule, while the combined risk-based capital requirement for multifamily mortgage exposures is $17.8 billion. In addition, the combined risk-based capital requirements for DTA and other assets under the proposed rule is zero and $6.3 billion, respectively.

Excluding the going-concern buffer, which was a capital requirement in the 2018 proposal but has been replaced by the stress capital buffer in the proposed rule, the combined risk-based capital requirements under the 2018 proposal for the single-family and multifamily businesses were $67.8 billion and $12.2 billion, respectively, as of September 30, 2019. As discussed above and shown in Table 3, the enhancements in the proposed rule would have increased the required capital for single-family assets and multifamily assets by $43.2 billion and $5.6 billion, respectively. Similarly, the risk-based capital requirement for other assets has increased by $0.2 billion. Finally, the risk-based capital requirement for DTA decreased by $7.4 billion in the proposed rule due to its new capital treatment.

The pro-cyclicality of the 2018 proposal's risk-based capital requirements complicates comparisons to the proposed rule. Under the 2018 proposal, the Enterprises would have likely found it necessary to maintain a considerable capital surplus in anticipation of a financial stress. One Enterprise's comment letter suggested that its total capital requirement would be expected to increase as much as 80 percent in a severely adverse stress.[13] The amount of this managerial cushion would have depended on the extent to which the Enterprises viewed it to be potentially costly or difficult to raise new capital in the midst of a financial stress.[14] The 2018 proposal's enforcement framework amplified the necessity of a managerial cushion by incorporating the going-concern buffer into the capital requirements, a violation of which could trigger significant regulatory sanctions. In contrast, the proposed rule converts the going-concern buffer into a stress capital buffer that an Enterprise may draw down during a period of financial stress. Because a managerial cushion in anticipation of an eventual stress would have been a practical, if not legal, necessity for the Enterprises, comparisons to the 2018 proposal should start with a reasonable assumption regarding the amount of this capital surplus.[15]

FHFA is cognizant that the leverage ratio requirements would currently exceed the risk-based capital requirements. FHFA has settled on this calibration of the leverage ratio requirements after considerable deliberation. The leverage ratio requirements are intended to serve as non-risk-based measures that provide a credible backstop to the risk-based capital requirements to safeguard against model risk and measurement error with a simple, transparent, independent measure of risk. The leverage ratio requirements would have the added benefit of dampening some of the pro-cyclicality inherent in the risk-based capital requirements. As discussed in Section VI.B.3, FHFA has sized the leverage ratio requirements to be a credible backstop to the risk-based capital requirements, taking into account considerations relating to the Enterprises' historical loss experiences, the model and related risks posed by the calibration of the risk-based capital requirements, and the analogous leverage ratio requirements under the U.S. banking framework and of the Federal Home Loan Banks. If the leverage ratio requirements are to be a credible backstop, there will inevitably be periods when leverage ratio requirements require more regulatory capital than the risk-based capital requirements, as is the case as of September 30, 2019. FHFA believes that mortgage market conditions as of September 30, 2019 reflect circumstances consistent with a period under which a credible leverage ratio would be binding, given the exceptional single-family house price appreciation since 2012, the unemployment rate at an historically low level, the strong credit performance of mortgage exposures as of that time, the significant progress by the Enterprises to materially reduce legacy exposure to non-performing loans (NPLs) and re-performing loans, robust CRT market access enabling substantial risk transfer, and the generally strong condition of key counterparties, such as mortgage insurers.

3. 2008 Financial Crisis Loss Experience [16]

This section examines the peak cumulative capital losses of each Enterprise relative to several different regulatory capital metrics: The statutory risk-based and leverage ratio requirements applicable to the Enterprise in 2007; the aggregate risk-based capital (requirement plus the PCCBA) under the proposed rule but without the contemplated single-family countercyclical adjustment; and the aggregate leverage capital (requirement plus the PLBA) under the proposed rule but without the contemplated single-family countercyclical adjustment.[17] As discussed in Section IV.B.2, under the 2018 proposal, Fannie Mae's and Freddie Mac's peak losses would have left, respectively, only $3 billion and $12 billion in remaining capital, not enough to have sustained the market confidence necessary for either Enterprise to continue as a going concern.

[13] *See* Comment Letter from Fannie Mae at 2 (Nov. 15, 2018).

[14] *Id.* at 2 (''To ensure adequate capital in such a scenario, any Regulated Institution would need to hold a sizeable capital surplus during more normal economic environments. The need for such a surplus is real, because consistent with their mission, the Regulated Institutions must maintain a constant presence in the housing market and would want to avoid being forced to raise capital in times of stress.'').

[15] On the one hand, the managerial cushion likely to be held by an Enterprise to mitigate the problem of having to raise regulatory capital in a period of financial stress could be considered a mitigant to safety and soundness risk. On the other hand, significant reductions in credit risk capital requirements due to sustained periods of house price growth and favorable economic conditions could contribute to safety and soundness risk.

[16] In 2008, the entire net worth of both Enterprises was depleted by losses. The U.S. Department of the Treasury (Treasury Department) invested in senior preferred stock of both Enterprises to offset the losses. Fannie Mae drew $116 billion from the Treasury between 2008 and the fourth quarter of 2011, while Freddie Mac drew $71 billion between 2008 and the first quarter of 2012.

[17] Peak cumulative capital losses are defined as cumulative losses, net of revenues earned, between 2008 and the respective date at which an Enterprise no longer required draws under the PSPA.

Table 4: Comparison of Fannie Mae's Capital Requirement as of December 31, 2007 to Peak Cumulative Capital Losses

	$ in billions	% of Adjusted Total Assets as of Dec 31, 2007
Net worth	$44	1.4%
Equity issuance in 2008	7	0.2%
Cumulative Treasury Draws through December 31, 2011	116	3.8%
Peak Cumulative Losses	$167	5.5%
Statutory Risk-Based Capital Requirement	$25	0.8%
...Relative to Peak Capital Losses	($143)	(4.7%)
Statutory Minimum Leverage Requirement	$42	1.4%
...Relative to Peak Capital Losses	($126)	(4.1%)
Adjusted Total Capital Requirement* plus Prescribed Capital Conservation Buffer Amount	$209	6.9%
...Relative to Peak Capital Losses	$42	1.4%
Leverage Capital Requirement plus Prescribed Leverage Buffer Amount (Tier 1 Capital)	$122	4.0%
...Relative to Peak Capital Losses	($45)	(1.5%)

**Excludes impact of proposed countercyclical adjustment*

Table 4 shows that as of December 31, 2007, Fannie Mae's statutory risk-based capital requirement was $25 billion, or 0.8 percent of adjusted total assets. The Enterprise's statutory minimum leverage ratio requirement was $42 billion, or 1.4 percent of adjusted total assets. For comparison, as of the same date, Fannie Mae's proposed risk-based measures (adjusted total capital requirement plus PCCBA) would have been $209 billion or 6.9 percent of adjusted total assets, and the proposed leverage measures (leverage ratio requirement plus PLBA) would have been $122 billion or 4.0 percent of adjusted total assets. While the leverage measure would have fallen $45 billion short of Fannie Mae's peak cumulative capital losses of $167 billion (5.5 percent of adjusted total assets), the proposed risk-based measures would have exceeded those peak losses by $42 billion. These comparisons are subject to the caveat that Fannie Mae's $167 billion in peak cumulative capital losses include a valuation allowance on DTAs of $64 billion. Because much of Fannie Mae's DTAs would have been deducted from adjusted total capital and tier 1 capital, the adjusted total capital and tier 1 capital that actually would have been exhausted during the 2008 financial crisis would have been considerably less than the $167 billion in peak cumulative capital losses reflected in Table 4.

Table 5: Comparison of Freddie Mac's Capital Requirement as of December 31, 2007 to Peak Cumulative Capital Losses

	$ in billions	% of Adjusted Total Assets as of Dec 31, 2007
Net worth	$27	1.2%
Equity issuance in 2008		
Cumulative Treasury Draws through March 31, 2012	71	3.3%
Peak Cumulative Losses	$98	4.5%
Statutory Risk-Based Capital Requirement	$14	0.6%
...Relative to Peak Capital Losses	($84)	(3.9%)
Statutory Minimum Leverage Requirement	$34	1.6%
...Relative to Peak Capital Losses	($64)	(2.9%)
Adjusted Total Capital Requirement* plus Prescribed Capital Conservation Buffer Amount	$128	5.9%
...Relative to Peak Capital Losses	$30	1.4%
Leverage Capital Requirement plus Prescribed Leverage Buffer Amount (Tier 1 Capital)	$87	4.0%
...Relative to Peak Capital Losses	($11)	(0.5%)

**Excludes impact of proposed countercyclical adjustment*

Table 5 shows that as of December 31, 2007, Freddie Mac's statutory risk-based capital requirement was $14 billion, or 0.6 percent of adjusted total assets. The Enterprise's statutory minimum leverage ratio requirement was $34 billion, or 1.6 percent of adjusted total assets. For comparison, as of the same date, Freddie Mac's proposed risk-based measures (adjusted total capital requirement plus PCCBA) would have been $128 billion or 5.9 percent of adjusted total assets, and the proposed leverage measures (leverage ratio requirement plus PLBA) would have been $87 billion or 4.0 percent of adjusted total assets. While the leverage measure would have fallen $11 billion short of Freddie Mac's peak cumulative capital losses of $98 billion (4.5 percent of adjusted total assets), the proposed risk-based measures would have exceeded those peak losses by $30 billion. These comparisons are subject to the caveat that Freddie Mac's $98 billion in peak cumulative capital losses include a valuation allowance on DTAs of $34 billion. Because much of Freddie Mac's DTAs would have been deducted from adjusted total capital and tier 1 capital, the adjusted total capital and tier 1 capital that actually would have been exhausted during the 2008 financial crisis would have been considerably less than the $98 billion in peak cumulative capital losses reflected in Table 5.

As discussed in Section VIII.A.4, FHFA is proposing that the base risk weights for single-family mortgage exposures would be subject to a countercyclical adjustment due to MTMLTV adjustments an Enterprise would be required to make when national house prices deviate by more than 5.0 percent above or below an estimated inflation-adjusted long-term trend. It is important to note that any additional regulatory capital that would have been required under the proposed single-family countercyclical adjustment is not included in the estimates of regulatory capital in either Tables 4 or 5. Looking back, it is likely that, given the considerable house price appreciation in the decade before the financial crisis, this countercyclical adjustment would have been in effect as of December 31, 2007. However, there are too many unknowns to quantify with any reasonable degree of certainty what that effect would have been, how the Enterprises' actions might have changed because of it, and how changes in the actions of the Enterprises might have affected the overall market. Therefore, FHFA is presenting the estimates without including a countercyclical adjustment, and acknowledging that with the countercyclical adjustment in place, the Enterprises would likely have had an even larger capital surplus relative to their peak cumulative capital losses than is presented in Tables 4 and 5.

III. Background

A. Pre-Crisis Regulatory Capital Framework

The Safety and Soundness Act established FHFA's predecessor agency, the Office of Federal Housing Enterprise Oversight (OFHEO), as the safety and soundness regulator of the Enterprises. As originally enacted, the Safety and Soundness Act specified a minimum capital requirement for the Enterprises in the form of a leverage ratio requirement set in statute at an amount equal to the sum of 2.5 percent of on-balance sheet assets and 0.45 percent of credit guarantees of MBS held by outside investors. OFHEO did not have the authority to adjust this minimum capital requirement.

The Safety and Soundness Act also required OFHEO to establish by regulation a risk-based capital stress test such that each Enterprise could survive a ten-year period with credit losses arising out of a prolonged regional stress [18] and large movements in interest rates.[19] Over a 7-year period, OFHEO issued a series of **Federal Register** notices to solicit public comments on the risk-based capital stress test regulation, eventually finalizing the rule in 2001. The final risk-based capital requirements, however, had little practical impact. The capital required under the statutory leverage ratio requirement consistently exceeded the capital required under OFHEO's risk-based regulation, in large part due to the prescriptive restrictions imposed by statute on the underlying stress scenario and also due to model risk-related failures to update the underlying data and model calibrations.[20] This pre-crisis regulatory capital framework would soon prove inadequate.

B. Lessons of the 2008 Financial Crisis

Starting in 2006, house prices in some regional markets began to decline, mortgage defaults began to rise, and the Enterprises began to incur credit and mark-to-market losses. In 2007, housing price declines spread across the nation, and issuances of private-label securities (PLS) largely ceased. The Enterprises' losses continued to mount into 2008, their share prices rapidly fell, and the spreads on their unsecured debt and mortgage-backed securities (MBS) widened.

In July 2008, following growing concern about the Enterprises' solvency, Congress passed HERA, establishing FHFA as the regulator for the Enterprises and authorizing the Treasury Department to support the Enterprises through purchases of their obligations and other securities. On September 6, 2008, FHFA used its new authorities under HERA to place each Enterprise into conservatorship. The next day, the Treasury Department exercised its HERA authority to enter into Senior Preferred Stock Purchase Agreements (each a PSPA) to support the Enterprises. The Enterprises ultimately required $191.5 billion in cash draws from the Treasury Department under the PSPAs.

1. Capital Adequacy

The scale of the Enterprises' capital exhaustion during the 2008 financial crisis is critically relevant to the capital necessary to ensure that each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle.

As discussed in Section II.D.3, the Enterprises' crisis-era cumulative capital losses peaked at $265 billion, approximately 4.8 percent of their total assets as of December 31, 2007. Setting aside the valuation allowances on their DTAs, which are subject to deductions and other adjustments to regulatory capital under the proposed rule, the Enterprises' peak cumulative capital losses were $167 billion, approximately 3.0 percent of their total assets as of December 31, 2007.

The Enterprises' crisis-era cumulative capital losses, while significant, could have been greater. The Enterprises' losses were likely mitigated by unprecedented federal government support of the housing market and the economy during the crisis, including the Home Affordable Modification Program, the Troubled Asset Relief Program, the 2009 stimulus package,[21] and the Federal Reserve System's purchases of more than $1.2 trillion of the Enterprises' debt and MBS from January 2009 to March 2010. The Enterprises' losses also were likely dampened by the declining interest rate environment of the period, when the interest rates on 30-year fixed-rate mortgage loans declined by approximately 200 basis points through the end of 2011, facilitating re-financings and loss mitigation programs.[22]

The Enterprises did later recoup a portion of the underlying valuation adjustments and other losses. However, peak cumulative capital losses are relevant to assessing the amount of capital that creditors and other counterparties would require to regard the Enterprises as viable going concerns throughout the duration of another severe economic downturn. Indeed, the Enterprises were still operating and able to recoup some of these losses only because the Treasury Department's support through the PSPAs kept them solvent going concerns.

2. Going-Concern Standard

The Enterprises' crisis-era funding difficulties established that each Enterprise must be capitalized to remain a viable going concern both during and after a severe economic downturn. Calibrating capital adequacy based on "claims paying capacity" or an insurance-like or similar standard that does not emphasize a going-concern standard is inconsistent with this lesson of the crisis in at least two respects.

First, the Enterprises fund themselves with a significant amount of short-term unsecured debt that must be regularly refinanced. Each Enterprise's funding needs are very likely to increase during an economic downturn, all else equal, as the Enterprise funds purchases of NPLs out of securitization pools. This is a funding need that peaked at $345 billion in 2010.

These ordinary course and pro-cyclical funding needs can be met only if the Enterprise continues to be regarded as a viable going concern by creditors throughout the duration of a financial stress. Creditors will be most skeptical of an Enterprise's continued solvency during periods of market turmoil, and it was the increase in the Enterprises' borrowing costs and the associated difficulties that the Enterprises faced in refinancing their debt that were among the most immediate grounds for FHFA placing the Enterprises into conservatorship.[23]

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[18] The statutory stress scenarios contemplated a period in which "losses occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing practice for that industry in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years, experienced the highest rates of default and severity of mortgage losses, in comparison with such rates of default and severity of mortgage losses in other such areas for any period of such duration." Safety and Soundness Act section 1361(a) (as in effect before amended by HERA).

[19] The statutory stress scenarios contemplated two periods: (i) A period in which the 10-year Treasury yield decreased to the lesser of 600 basis points below the average yield during the preceding 9 months or 60 percent of the average yield during the preceding three years; and (ii) a period in which the 10-year Treasury yield increased to the greater of 600 basis points above the average yield during the preceding 9 months or 160 percent of the average yield during the preceding three years. *Id.*

[20] *See* W. Scott Frame et al, *The Failure of Supervisory Stress Testing: Fannie Mae, Freddie Mac, and OFHEO* (Working Paper 2015–3) at 3, available at *https://www.frbatlanta.org/-/media/documents/research/publications/wp/2015/03.pdf.*

[21] *See* American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

[22] The average interest rate on 30-year mortgage loans was approximately 6.14 percent at the end of 2007, and fell to 4.2 percent toward the end of October 2011. Over this period, yields on 10-year Treasuries fell from approximately 3.88 percent at the end of 2008 to 2.06 percent at the end of October 2011.

[23] *See Memorandum dated September 6, 2008 re: Proposed Appointment of the Federal Housing Finance Agency as Conservator for the Fannie Mae* at 29 ("The Enterprise's practice of relying upon repo financing of its agency collateral to raise cash in the current credit and liquidity environment is

Second, only a going-concern capital adequacy standard can ensure that each Enterprise will be positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle. The Enterprises were not positioned to effectively support the secondary mortgage market as their financial conditions deteriorated in 2007 and 2008.[24] In an attempt to enable the Enterprises to continue to support the secondary mortgage market, OFHEO relaxed the mortgage portfolio caps and reduced a capital buffer that had been imposed by consent order.[25]

3. High-Quality Capital

Another lesson of the 2008 financial crisis is that it is not only the quantity but also the quality of the regulatory capital, especially its loss-absorbing capacity, that is critical to the Enterprises' safety and soundness. Market confidence in the Enterprises came into doubt in mid-2008 when Fannie Mae and Freddie Mac had total capital of, respectively, $55.6 billion and $42.9 billion. Questions about the Enterprises' solvency likely arose in part due to their sizeable DTAs, which counted toward total capital but had less loss-absorbing capacity during a period of negative income. Freddie Mac would have actually had a negative book value as of June 30, 2008 after deducting its DTAs. Besides the DTA valuation allowances, there was also uncertainty as to the sufficiency of the Enterprises' allowances for loan losses (ALLL).[26] For these and other reasons, the Basel framework includes deductions and other adjustments for DTAs and ALLL, as well as other capital elements that might have less loss-absorbing capacity.[27]

Table 6 illustrates the importance of requiring high-quality capital by showing the evolution of CET1 capital, tier 1 capital, adjusted total capital, core capital, and total capital at each Enterprise leading up to the 2008 financial crisis. As the table indicates, the Enterprises' combined core capital increased from $77.3 billion in 2006 to $84.1 billion in 2008, suggesting at first glance a position of some financial strength. However, over the same time period the Enterprises' combined tier 1 capital decreased markedly from $76.3 billion to $24.1 billion, indicating a capital position with deteriorating and substantially less loss-absorbing capacity. Similarly, the Enterprises' combined total capital increased from $78.7 billion in 2006 to $98.5 billion in 2008, while over the same time period the Enterprises' adjusted total capital decreased from $85.9 billion to $29.6 billion.

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an unsafe or unsound practice that has led to an unsafe or unsound condition, given the unavailability of willing lenders to provide secured financing in significant size to reduce pressure on its discount notes borrowings.''); and *Memorandum dated September 6, 2008 re: Proposed Appointment of the Federal Housing Finance Agency as Conservator for the Freddie Mac* at 28 (''The Enterprise's prolonged reliance almost exclusively on 30-day discount notes is an untenable long-term source of funding and an unsafe or unsound practice that poses abnormal risk to the viability of the Enterprise. Operating without an adequate liquidity funding contingency plan is an unsafe or unsound condition to transact business.''); and Fin. Crisis Inquiry Comm'n, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States at 316 (2011) (the FCIC Report), available at *https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf*; (''In July and August 2008, Fannie suffered a liquidity squeeze, because it was unable to borrow against its own securities to raise sufficient cash in the repo market.''); *see id.* at 316 (''By June 2008, the spread [between the yield on the GSEs' long-term bonds and rates on Treasuries] had risen 65 percent over the 2007 level; by September 5, just before regulators parachuted in, the spread had nearly doubled from its 2007 level to just under 1 percent, making it more difficult and costly for the GSEs to fund their operations.'').

[24] *See* FCIC Report at 311, available at *https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf*; (''Few doubted Fannie and Freddie were needed to support the struggling housing market. The question was how to do so safely. Purchasing and guaranteeing risky mortgage-backed securities helped make money available for borrowers, but it could also result in further losses for the two huge companies later on. 'There's a real tradeoff,' Lockhart said in late 2007—a trade-off made all the more difficult by the state of the GSEs' balance sheets.'''); *Statement of FHFA Director James B. Lockhart at News Conference Announcing Conservatorship of Fannie Mae and Freddie Mac* (Sept. 7, 2008), available at *https://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Director-James-B--Lockhart-at-News-Conference-Annnouncing-Conservatorship-of-Fannie-Mae-and-Freddie-Mac.aspx*; (''Unfortunately, as house prices, earnings and capital have continued to deteriorate, their ability to fulfill their mission has deteriorated . . . . The result has been that they have been unable to provide needed stability to the market. They also find themselves unable to meet their affordable housing mission.''); *id.* (''The lack of confidence has resulted in continuing spread widening of their MBS, which means that virtually none of the large drop in interest rates over the past year has been passed on to the mortgage markets.'').

[25] *News Release, OFHEO, Fannie Mae and Freddie Mac Announce Initiative to Increase Mortgage Market Liquidity* (Mar. 19, 2008), available at *https://www.fhfa.gov/Media/PublicAffairs/Pages/OFHEO,-Fannie-Mae-and-Freddie-Mac-Announce-Initiative-to-Increase-Mortgage-Market-Liquidity.aspx*; (''OFHEO estimates that Fannie Mae's and Freddie Mac's existing capabilities, combined with this new initiative and the release of the portfolio caps announced in February, should allow the GSEs to purchase or guarantee about $2 trillion in mortgages this year.'').

[26] *See FCIC Report* at 317, available at *https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf*; (''[T]he Fed found that the GSEs were significantly 'underreserved,' with huge potential losses . . . The OCC rejected the forecasting methodologies on which Fannie and Freddie relied. Using its own metrics, it found insufficient reserves for future losses . . . .'').

[27] *See* BCBS, *The Basel Framework* CAP10 (Dec. 15, 2019), available at *https://www.bis.org/basel_framework/chapter/CAP/10.htm?inforce=20191215&export=pdf; see also* BCBS, *Basel: A Global Regulatory Framework for More Resilient Banks and Banking Systems, paragraphs 8 and 9,* (Dec. 2010; revised June 2011), available at *http://www.bis.org/publ/bcbs189.htm*; (''The crisis demonstrated that credit losses and writedowns come out of retained earnings, which is part of banks' tangible common equity base . . . . To this end, the predominant form of Tier 1 capital must be common shares and retained earnings.'').

Table 6: Comparison of Capital, December 31, 2006 to June 30, 2008

$ in billions	Fannie Mae			Freddie Mac			Enterprises Combined		
	Dec 31, 2006	Dec 31, 2007	Jun 30, 2008	Dec 31, 2006	Dec 31, 2007	Jun 30, 2008	Dec 31, 2006	Dec 31, 2007	Jun 30, 2008
Core Capital	$42.0	$45.4	$47.0	$35.4	$37.9	$37.1	$77.3	$83.2	$84.1
Proposed Tier 1 Capital	40.3	35.7	22.9	36.0	26.0	0.9	76.3	61.7	23.8
Proposed Tier 1 Capital minus Core Capital	($1.7)	($9.7)	($24.1)	$0.6	($11.9)	($36.2)	($1.0)	($21.5)	($60.3)
Proposed Tier 1 Capital/ Core Capital	96%	79%	49%	102%	69%	3%	99%	74%	28%
Total Capital	$42.7	$48.7	$55.6	$36.0	$40.7	$42.9	$78.7	$89.3	$98.5
Proposed Adjusted Total Capital	48.0	42.2	22.9	38.0	29.9	6.8	85.9	72.1	29.6
Proposed Adjusted Total Capital minus Total Capital	$5.3	($6.4)	($32.7)	$2.0	($10.8)	($36.2)	$7.3	($17.2)	($68.9)
Proposed Adjusted Total Capital/ Total Capital	112%	87%	41%	106%	73%	16%	109%	81%	30%
Proposed CET 1 Capital	$31.2	$18.8	$1.2	$25.8	$11.9	($13.2)	$57.0	$30.7	($12.0)

4. Stability of the National Housing Finance Markets

After the taxpayer-funded rescue of the Enterprises in 2008, there can be no doubt as to the risk posed by an insolvent or otherwise financially distressed Enterprise to the stability of the national housing finance markets. The Enterprises were then, and remain today, the dominant participants in the housing finance system, owning or guaranteeing 37 percent of residential mortgage debt outstanding as of December 31, 2007 and 44 percent of residential mortgage debt outstanding as of September 30, 2019. Both then and still today, banks, insurance firms, and securities broker-dealers own significant amounts of the Enterprises' unsecured debt and MBS. Both then and still today, the Enterprises control critical infrastructure for securitizing and administering $5.5 trillion of outstanding single-family and multifamily conventional MBS.[28] Given the nature, scope, size, scale, concentration, and interconnectedness of each Enterprise, the financial distress of an Enterprise could have significant adverse effects on the liquidity, efficiency, competitiveness, or resiliency of national housing finance markets. For these and related reasons, the Treasury Department ultimately invested $191.5 billion under the PSPAs in the Enterprises to keep them solvent going concerns.

C. Post-Crisis Changes to Regulatory Capital Frameworks

After the 2008 financial crisis, financial services regulators in the U.S. and internationally revisited their regulatory capital frameworks to address lessons learned. The international efforts of the leading banking regulators through the BCBS culminated in 2010 in enhancements to the Basel framework.[29] That comprehensive reform package was designed to improve the quality and quantity of regulatory capital and to build additional capacity into the banking system to absorb losses during future periods of financial stress. Revisions to the international capital standards included a more restrictive definition of regulatory capital, higher regulatory capital requirements, a capital conservation buffer that could be drawn down during periods of financial stress, and also capital surcharges for systemic importance.

With respect to the Enterprises, HERA gave FHFA greater authority to determine capital standards for the Enterprises by removing the Safety and Soundness Act's restrictions on the risk-based capital requirements and by giving FHFA authority to increase leverage ratio requirements above the statutory minimum. Each Enterprise was placed into conservatorship shortly after enactment of HERA, and FHFA suspended the Enterprises' statutory capital classifications and regulatory capital requirements. FHFA, in its capacity as conservator, then began to develop a framework known as the Conservatorship Capital Framework to ensure that each Enterprise assumed appropriate regulatory capital requirements in managing their businesses. The Conservatorship Capital Framework was implemented in 2017, and ultimately was the foundation of the 2018 proposal.

IV. Rationale for Re-Proposal

FHFA is re-proposing the regulatory capital framework for the Enterprises for three key reasons:

[28] During the conservatorship, some of that functionality has been moved to the Common Securitization Platform, which is jointly owned and operated by the Enterprises. In January 2020, FHFA announced that it had directed the Enterprises to amend the governance of the entity that operates the Common Securitization Platform to include an independent, non-executive chairman of the board of directors and add up to three additional independent directors.

[29] *See* BCBS, *Basel: A Global Regulatory Framework for More Resilient Banks and Banking Systems* (Dec. 2010; revised June 2011), available at *http://www.bis.org/publ/bcbs189.htm.*

- First, FHFA has begun the process to responsibly end the conservatorships of the Enterprises. This policy change is a departure from the expectations of interested parties at the time of the 2018 proposal, when the prospects for indefinite conservatorships informed comments and perhaps even the decision whether to comment at all.
- Second, FHFA is proposing to increase the quantity and quality of the regulatory capital at the Enterprises to ensure the safety and soundness of each Enterprise and that each Enterprise can fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle, in particular during periods of financial stress.
- Third, to facilitate regulatory capital planning and also in furtherance of the safety and soundness of the Enterprises and their countercyclical mission, FHFA is proposing changes to mitigate the pro-cyclicality of the aggregate risk-based capital requirements of the 2018 proposal.

While these enhancements preserve the 2018 proposal as the foundation of the Enterprises' regulatory capital framework, FHFA has nonetheless determined to solicit comments on this revised framework in its entirety in light of the changed policy environment, the extent and nature of the enhancements, the technical nature of the underlying issues, the diverse range of interested parties, and the critical importance of the Enterprises' regulatory capital framework to the national housing finance markets.

A. Responsibly Ending the Conservatorships

FHFA stated in the 2018 proposal that ''this proposed rule is not a step towards recapitalizing the Enterprises and administratively releasing them from conservatorship.'' [30] FHFA also noted that ''[p]ublication of this proposed rule will assist with FHFA's administration of the conservatorships of Fannie Mae and Freddie Mac by potentially refining the [Conservatorship Capital Framework].'' [31] It is possible that these and other statements made by FHFA, as well as the generally prevailing uncertainty at the time as to the Enterprises' prospects for exiting conservatorships, might have influenced interested parties' views as to the practical relevance of the 2018 proposal or otherwise dissuaded the submission of some comments. In fact, more than half of the comments on the 2018 proposal related to the ongoing conservatorships rather than the proposed regulatory capital framework.

The policy environment has since changed. In September 2019, the Treasury Department released its housing reform plan that recommended that FHFA begin the process to end each Enterprise's conservatorship in a manner consistent with the preconditions set forth in that plan, and also recommended a recapitalization plan be developed for each Enterprise.[32] Shortly thereafter, the Treasury Department and FHFA, on behalf of each Enterprise in its capacity as conservator, entered into letter agreements permitting the Enterprises to together retain up to $45 billion in capital. In October 2019, FHFA then issued a new Strategic Plan and Scorecard for the Enterprises that stated that ''[e]nding the conservatorships of Fannie Mae and Freddie Mac is a central and necessary element of this new roadmap.''

These developments were important factors in FHFA's decision to re-propose the regulatory capital framework in its entirety. FHFA considered extensively the comments received on the 2018 proposal and made significant adjustments to multiple aspects of the proposed regulatory capital framework in response to the comments received. FHFA now hopes and expects that the clarity as to the Enterprises' eventual exit from conservatorship will lead to new, different, and more extensive comments. To that end, FHFA emphasizes that the purpose of the proposed rule is to establish a regulatory capital framework that ensures the safety and soundness of each Enterprise and that each Enterprise is positioned to fulfill its statutory mission across the economic cycle, in particular during periods of financial stress.

B. Ensuring Capital Adequacy

1. Quality of Capital

As discussed in Section III.B.3, a lesson of the 2008 financial crisis is that the Enterprises' safety and soundness depends not only on the quantity but also on the quality of their regulatory capital. In light of the lessons learned, FHFA has determined enhancements are necessary to address two key concerns with respect to the quality of the Enterprise's regulatory capital.

First, enhancements are necessary to limit the amount of regulatory capital that may consist of certain components of capital such as DTAs that might tend to have less loss-absorbing capacity during a period of financial stress. FHFA noted in the 2018 proposal that the Enterprises' DTAs, which are included in total capital and core capital by statute, ''may provide minimal to no loss-absorbing capability during a period of [financial] stress as recoverability (via taxable income) may become uncertain.'' [33] The 2018 proposal addressed this issue by establishing a risk-based capital requirement for DTAs. However, the 2018 proposal did not include adjustments for other capital elements that tend to have less loss-absorbing capacity during a financial stress (*e.g.,* ALLL, goodwill, and intangibles). The 2018 proposal also did not adjust for accumulated other comprehensive income (AOCI), leaving open the possibility that an Enterprise could have positive total capital and core capital despite being insolvent under GAAP, though FHFA did request comment on whether to include offsetting capital requirements to AOCI similar to the treatment of DTAs.

Second, the statutory definitions of regulatory capital used in the 2018 proposal did not limit the extent to which preferred shares could satisfy the risk-based capital requirements. Specifically, there was neither a risk-based capital requirement for core capital nor a requirement that retained earnings and other common equity be the predominant form of capital, as under the Basel framework.[34] The 2018 proposal sought feedback on this issue and commenters recommended FHFA limit the inclusion of preferred shares in regulatory capital to align with the U.S. banking framework's definition of tier 1 capital.

To address these and related concerns, and as described in more detail in Section V.B., FHFA is proposing to supplement the total capital and core capital requirements with additional capital requirements

[30] 83 FR at 33313.

[31] *Id.*

[32] Treasury, Housing Reform Plan at 27 (Sept. 2019), available at *https://home.treasury.gov/system/files/136/Treasury-Housing-Finance-Reform-Plan.pdf.*

[33] 83 FR at 33388. Deducting the Enterprises' DTAs from their $98.5 billion in total capital in mid-2008 in a manner generally consistent with the U.S. banking regulators' approach would have left the Enterprises with little regulatory capital, reflective of the financial distress that the Enterprises were experiencing at the time and also consistent with the $53.8 billion in capital reductions realized a few months later with the valuation allowances on the Enterprises' DTAs.

[34] *See* BCBS, *Basel: A Global Regulatory Framework for More Resilient Banks and Banking Systems, paragraphs 8 and 9* (*Dec.* 2010; revised June 2011), available at *http://www.bis.org/publ/bcbs189.htm;* (''It is critical that banks' risk exposures are backed by a high quality capital base. The crisis demonstrated that credit losses and writedowns come out of retained earnings, which is part of banks' tangible common equity base . . . . To this end, the predominant form of Tier 1 capital must be common shares and retained earnings.'').

based on the Basel framework's definitions of total capital, tier 1 capital, and CET1 capital. These supplemental capital requirements would include customary deductions and other adjustments for certain DTAs, goodwill, intangibles, and other assets that tend to have less loss-absorbing capacity during a financial stress. The risk-based tier 1 and CET1 capital requirements also would ensure that retained earnings and other high-quality capital are the predominant form of regulatory capital.

2. Quantity of Capital

FHFA has also determined enhancements to the 2018 proposal are necessary to ensure a safe and sound quantity of regulatory capital at each Enterprise. In particular, due in part to the lack of prudential floors on risk-based capital requirements and capital buffers, the 2018 proposal's credit risk capital requirements were insufficient to ensure the safety and soundness of each Enterprise and that each Enterprise could continue to fulfill its statutory mission during a period of financial stress. In determining the need for these enhancements, FHFA considered the following facts, among others:

- *Cumulative Crisis-Era Capital Losses.* Fannie Mae and Freddie Mac's peak cumulative capital losses from 2008 through 2011 and the first quarter of 2012, respectively, were, respectively, $167 billion and $98 billion. Had the 2018 proposal been in effect at the end of 2007, the 2018 proposal's risk-based capital requirements for Fannie Mae and Freddie Mac would have been, respectively, $171 billion and $110 billion. Fannie Mae and Freddie Mac's peak losses would have left, respectively, only $3 billion and $12 billion in remaining capital. At 0.1 percent and 0.5 percent of their total assets and off-balance sheet guarantees respectively, these amounts would not have sustained the market confidence necessary for the Enterprises to continue as going concerns, particularly given the prevailing stress in the financial markets at that time and also given the uncertainty as to the potential for other write-downs and the adequacy of the Enterprises' allowances for loan losses. Indeed, in October 2010, FHFA projected $90 billion in additional PSPA draws through 2013 under the baseline scenario, although only $34 billion in additional draws proved necessary.[35]
- *Single-family Credit Losses.* Freddie Mac's estimated single-family credit risk capital requirement under the 2018 proposal of $59 billion as of December 31, 2007 would have been less than its lifetime single-family credit losses of $64 billion on its December 31, 2007 guarantee portfolio. Even excluding loans that Freddie Mac no longer acquires, Freddie Mac's estimated single-family credit risk capital requirement of $24 billion under the 2018 proposal would have exceeded projected lifetime losses of $20 billion by only $4 billion (0.4 percent of the unpaid principal balance on the single-family book as of December 31, 2007). Fannie Mae's estimated single-family credit risk capital requirement under the 2018 proposal would have exceeded projected lifetime losses on its December 31, 2007 guarantee portfolio whether including or excluding loans that it no longer acquires, but only by $9 billion in both scenarios (0.4 percent and 0.7 percent, respectively, of the unpaid principal balance of the single-family book as of December 31, 2007).
- *Comparison to the Basel and U.S. Banking Frameworks.* Had the 2018 proposal been in effect on September 30, 2019, the average pre-CRT net credit risk capital requirement on the Enterprises' single-family mortgage exposures would have been 1.6 percent of unpaid principal balance, implying an average risk weight of 20 percent.[36] The U.S. banking framework generally assigns a 50 percent risk weight to single-family mortgage exposures to determine the credit risk capital requirement (equivalent to a 4.0 percent adjusted total capital requirement), while the current Basel framework generally assigns a 35 percent risk weight (equivalent to a 2.8 percent adjusted total capital requirement). Before adjusting for the capital buffers under the proposed rule and the Basel and U.S. banking frameworks, the Enterprises' regulatory capital requirements for single-family mortgage exposures under the 2018 proposal would have been 40 percent that of U.S. banking organizations and less than 60 percent that of non-U.S. banking organizations. The BCBS has finalized a more risk-sensitive set of risk weights for residential mortgage exposures, which are to be implemented by January 1, 2022.[37] With those changes, the lowest standardized risk weight would be 20 percent for single-family residential mortgage loans with LTVs at origination less than 50 percent. The 20 percent average risk weight would have been the same as the Basel framework's 20 percent minimum, notwithstanding the Enterprises having an average single-family original loan-to-value (OLTV) of approximately 77 percent as of September 30, 2019. These comparisons are complicated by the fact that the 20 percent average risk weight reflects capital relief for loan-level credit enhancement and MTMLTV. In particular, some meaningful portion of the gap between the credit risk capital requirements of the banking organizations and the Enterprises under the 2018 proposal is due to the 2018 proposal's use of MTMLTV instead of OLTV, as under the U.S. banking framework, to assign credit risk capital requirements for mortgage exposures. In a different house price environment, perhaps after several years of declining house prices, the mark-to-market framework could have resulted in higher credit risk capital requirements than the Basel and U.S. banking frameworks. Similarly, some of this gap might have been expected to narrow had real property prices moved toward their long-term trend. However, the sizing of the current gap under the 2018 proposal is still an important consideration informing the enhancements to the 2018 proposal. Notably, the 20 percent average risk weight would have been the same as the Basel framework's 20 percent risk weight assigned to exposures to sovereigns and central banks with ratings A+ to A− and claims on banks and corporates with ratings AAA to AA−.[38] The 20 percent average risk weight also would have been the same as the 20 percent risk weight assigned under the U.S. banking framework to Enterprise-guaranteed MBS.
- *Monoline businesses.* As discussed in the 2018 proposal, comparisons to the U.S. banking framework's capital requirements are complicated by the different risk profiles of the Enterprises and large banking organizations.[39] The Enterprises, for example, transfer much of the interest rate and funding risk on their mortgage exposures through their sales of their guaranteed MBS, while large banking organizations generally must fund those loans through customer deposits and other sources. While the interest rate and funding risk profiles are different, that difference should not

[35] *See Fed. Hous. Fin. Agency, Projections of the Enterprises' Financial Performance* at 10 (Oct. 2010), available at *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2010-10_Projections_508.pdf.*

[36] This average risk weight equals the average post-CRT net credit risk capital requirement, excluding the going-concern buffer, under the 2018 proposal of approximately 164 basis points, divided by a total capital requirement of 800 basis points.

[37] BCBS, *Basel III: Finalising Post-Crisis Reforms,* paragraph 64, at 21 (Dec. 2017), available at *https://www.bis.org/bcbs/publ/d424.pdf.*

[38] *See* BCBS, *The Basel Framework,* paragraphs 20.4 and 20.14 (Dec. 15, 2019), available at *https://www.bis.org/basel_framework/index.htm?export=pdf.*

[39] 83 FR at 33323.

preclude comparisons of the *credit risk* capital requirements of the U.S. banking framework to the *credit risk* capital requirements of the Enterprises. The Basel and U.S. banking frameworks generally do not contemplate an explicit capital requirement for interest rate risk on banking book exposures, leaving interest rate risk capital requirements to bank-specific tailoring through the supervisory process.[40] If anything, the monoline nature of the Enterprises' mortgage-focused businesses actually suggests that the concentration risk of an Enterprise might be greater than that of a diversified banking organization with a similar amount of credit risk. FHFA has not attempted to make a specific adjustment to the risk-based capital requirements to mitigate the Enterprises' concentration risk, but the heightened risk associated with the Enterprises' sector-specific concentration is nonetheless an important consideration in determining the need for the enhancements contemplated by the proposed rule.

More generally, enhancements are necessary to mitigate certain risks and limitations associated with the underlying historical data and models used to calibrate the 2018 proposal's credit risk capital requirements. For example:

- *Limitations of crisis-era data.* Under the 2018 proposal, the credit risk capital requirement for a mortgage exposure was calibrated to be sufficient to absorb the lifetime unexpected losses incurred on loans of that type experiencing a shock to house prices similar to that observed during the 2008 financial crisis. As discussed in Section III.B, the Enterprises' financial crisis-era losses likely were mitigated to at least some extent by the unprecedented support by the federal government of the housing market and the economy, and also by the declining interest rate environment of the period. There is therefore some risk that the 2018 proposal's risk-based capital requirements, notwithstanding the required going-concern buffer, were not calibrated to ensure each Enterprise would be regarded as a viable going concern following an economic downturn that potentially entails more unexpected losses, whether because there is less or no Federal support of the economy, because there is less or no reduction in interest rates, or because of other causes. For example, post-crisis changes in federal, state, and local loss mitigation and other foreclosure requirements might increase the uncertainty as to loss estimations.
- *High-risk loan products.* A disproportionate share of the Enterprises' crisis-era credit losses (approximately $108 billion) arose from certain single-family mortgage exposures that are no longer eligible for acquisition by the Enterprises. The calibration of the 2018 proposal's credit risk capital requirements attributed a significant portion of the Enterprises' crisis-era losses to these product characteristics, including ''Alt-A,'' negative amortization, interest-only, and low or no documentation loans, as well as loans with debt-to-income ratio at origination greater than 50 percent, cash out refinances with total LTV greater than 85 percent, and investor loans with LTV greater than or equal to 90 percent. The statistical methods used to allocate losses between borrower-related risk attributes and product-related risk attributes pose significant model risk. To ensure safety and soundness, the capital requirements should mitigate the risk of potential underestimation of credit losses that would be incurred in an economic downturn with national housing price declines of similar magnitude, even absent those loan types and even assuming a repeat of Federal support of the economy and the declining interest rate environment.[41]
- *Gaps in risk coverage.* There are some material risks to the Enterprises that were not assigned a risk-based capital requirement under either the 2018 proposal and the proposed rule—for example, risks relating to uninsured or underinsured losses from flooding, earthquakes, or other natural disasters or radiological or biological hazards. There also is no risk-based capital requirement for the risks that climate change could pose to property values in some localities.

Related to these capital adequacy concerns, the 2018 proposal's required capital was not tailored to the risk that a default or other financial distress of an Enterprise could have on the liquidity, efficiency, competitiveness, or resiliency of national housing finance markets. As described in Section VII.A.3, the absence of a stability capital buffer poses not only a risk to the national housing finance markets but also a risk to the safety and soundness of the Enterprises by perpetuating their funding advantages and undermining market discipline over their risk taking.

To address these and related concerns, and as described in more detail below, FHFA is proposing, among other changes:

- A prudential floor on the credit risk capital requirement for mortgage exposures to mitigate the model and other risks associated with the methodology for calibrating the credit risk capital requirements.
- A credit risk capital requirement on senior tranches of CRT held by an Enterprise, an adjustment to the CRT capital treatment to reflect that CRT is not equivalent in loss-absorbing capacity to equity financing, and operational criteria for CRT structures that together would mitigate the structuring, recourse, and other risks associated with these securitizations.
- Risk-based capital requirements for a number of exposures not expressly addressed by the 2018 proposal, including credit risk on commitments to acquire mortgage loans, counterparty risk on interest rate and other derivatives, and credit risk on an Enterprise's holdings or guarantees of the other Enterprise's MBS.
- A countercyclical adjustment for single-family credit risk that would result in greater capital retention when housing markets may be vulnerable to correction, while better enabling the Enterprises to play a countercyclical role.
- A stress capital buffer that would, among other things, enhance the resiliency of the Enterprises and ensure that each Enterprise would continue to be regarded as a viable going concern by creditors and other counterparties after a severe economic downturn.
- A stability capital buffer tailored to the risk that the Enterprise's default or other financial distress could have on the liquidity, efficiency, competitiveness, and resiliency of national housing finance markets.
- A revised method for determining operational risk capital requirements, as well as a higher floor.
- A requirement that each Enterprise maintain internal models for determining its own risk-based capital requirements that would prompt each Enterprise to develop its own view of credit and other risks and not rely solely on the risk assessments underlying the standardized risk weights assigned under this regulatory capital framework.
- A 2.5 percent leverage ratio and a 1.5 percent PLBA that would together serve as a credible backstop to the risk-based capital requirements and mitigate the inherent risks and limitations of any

[40] *See* BCBS, *Interest Rate Risk in the Banking Book,* paragraph 1 (April 2016), available at *https://www.bis.org/bcbs/publ/d368.pdf*; (''Interest rate risk in the banking book (IRRBB) is part of the Basel capital framework's Pillar 2 (Supervisory Review Process) and subject to the Committee's guidance set out in the 2004 Principles for the management and supervision of interest rate risk (henceforth, the IRR Principles).'').

[41] Reliance on static look-up grids and multipliers might also introduce additional model risk as borrower behavior, mortgage products, underwriting practices, or the national housing markets continue to evolve.

methodology for calibrating those requirements.

C. Addressing Pro-Cyclicality

Consistent with many of the comments on the 2018 proposal, FHFA has determined that mitigating the pro-cyclicality of the 2018 proposal's risk-based capital requirements would facilitate capital management, enhance the safety and soundness of the Enterprises by preventing risk-based capital requirements from decreasing to unsafe and unsound levels, and help position the Enterprises to fulfill their statutory mission to provide stability and ongoing assistance to the national housing finance markets across the economic cycle. A pro-cyclical framework could have incentivized the Enterprises to expand credit when house prices increased, potentially left the Enterprises without regulatory capital that could be drawn down during a period of financial stress, and perhaps even exacerbated the housing price cycle itself. A pro-cyclical framework also could have led to large swings in required capital, leading to the practical necessity that prudent management would maintain a managerial capital surplus well above the capital requirements.

As described in more detail below, FHFA is proposing several enhancements to address this pro-cyclicality while preserving the mortgage risk-sensitive framework of the 2018 proposal. Among other changes, FHFA is proposing:

- A countercyclical adjustment to adjust each single-family mortgage exposure MTMLTV when national housing prices are 5.0 percent above or below the inflation-adjusted long-term trend.
- A stress capital buffer and a separate leverage buffer that will, in addition to enhancing the resiliency of the Enterprises, dampen pro-cyclicality by encouraging each Enterprise to retain capital during good times while remaining able to provide stability and ongoing assistance to the secondary mortgage market during a period of financial stress by utilizing capital buffers as losses are experienced.
- A prudential floor on the credit risk capital requirement for mortgage exposures that, in addition to mitigating the model and other risks associated with the methodology for calibrating the credit risk capital requirements, would also provide further stability to the risk-based capital requirements through the cycle.
- A requirement that each Enterprise maintain its own view of credit and other risks, including as to the relationship between housing prices and market fundamentals, by maintaining its own internal models for determining risk-based capital.

V. Definitions of Regulatory Capital

A. Statutory Definitions

As discussed in Sections VI.A and VI.B, the proposed rule would require each Enterprise to maintain required amounts of core capital and total capital, as defined in the Safety and Soundness Act.

Core capital means, with respect to an Enterprise, the sum of the following (as determined in accordance with GAAP):

- The par or stated value of outstanding common stock;
- The par or stated value of outstanding perpetual, noncumulative preferred stock;
- Paid-in capital; and
- Retained earnings.

Core capital does not include any amounts that the Enterprise could be required to pay, at the option of investors, to retire capital instruments.

Total capital means, with respect to an Enterprise, the sum of the following:

- The core capital of the Enterprise;
- A general allowance for foreclosure losses, which: (i) Includes an allowance for portfolio mortgage losses, an allowance for non-reimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the Enterprise for estimated foreclosure losses on mortgage-backed securities; and (ii) does not include any reserves of the Enterprise made or held against specific assets; and
- Any other amounts from sources of funds available to absorb losses incurred by the Enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

Notably, as discussed in Section IV.B.1, these statutory definitions do not include deductions and other adjustments for capital elements that might tend to have less loss-absorbing capacity during a period of financial stress (*e.g.,* DTAs, ALLL, goodwill, and intangibles). These statutory definitions also do not limit the extent to which preferred shares may satisfy the risk-based capital requirements.

B. Supplemental Definitions

1. Loss-Absorbing Capacity

Following HERA's amendments to the Safety and Soundness Act, FHFA has wide authority to prescribe regulatory capital requirements for the Enterprises. The Safety and Soundness Act generally authorizes FHFA to prescribe by regulation risk-based capital requirements for the Enterprises.[42] The Safety and Soundness Act also authorizes FHFA to prescribe minimum capital levels that are greater than the levels prescribed by statute.[43] The FHFA Director has general regulatory authority over the Enterprises, as well as the authority to issue regulations to carry out the duties of the FHFA Director.[44] The FHFA Director also may establish such other operational and management standards as the FHFA Director determines to be appropriate.[45] As amended by HERA, these and other provisions of the Safety and Soundness Act give the FHFA Director generally broad and flexible authority to tailor regulatory capital requirements for the Enterprises, including to prescribe additional capital requirements that supplement the statutory capital classifications based on total capital and core capital.

FHFA is proposing to supplement the statutory definitions of total capital and core capital requirements with additional regulatory capital definitions based on the Basel framework's definitions of total capital, tier 1 capital, and CET1 capital. These supplemental definitions would include customary deductions and other adjustments for certain DTAs, goodwill, intangibles, and other assets that tend to have less loss-absorbing capacity during a financial stress. As discussed in Section IV.B.1, the supplemental definitions of regulatory capital would fill certain gaps in the statutory definitions of core capital and total capital. For example, neither core capital nor total capital adjust for AOCI, leaving open the possibility that an Enterprise could have positive total capital and core capital but yet be insolvent under GAAP. The supplemental tier 1 and CET1 capital requirements also would ensure that retained earnings and other high-quality capital are the predominant form of regulatory capital.

Because the supplemental definitions of regulatory capital in the proposed rule are adopted from the Basel framework, the supplemental definitions would be familiar to market participants. This familiarity should facilitate comparisons between the regulatory capital requirements of the Enterprises, banking organizations, and other market participants. The use of well-understood definitions of regulatory capital should also facilitate market discipline over the Enterprises' risk-taking by positioning future

[42] 12 U.S.C. 4611.

[43] 12 U.S.C. 4612.

[44] 12 U.S.C. 4511, 4526.

[45] 12 U.S.C. 4513b.

shareholders, creditors, and other counterparties to more readily understand the regulatory capital that is available to absorb losses.

Consistent with the 2018 proposal, neither the statutory definitions nor the supplemental definitions of regulatory capital would include a measure of future guarantee fees or other future revenues. Counting future revenues toward capital requirements could be appropriate under a ''claims-paying capacity'' or similar framework that seeks only to ensure that an Enterprise has the ability to perform its guarantee and other financial obligations over time, perhaps subject to a stay or other pause in the payment of claims and other financial obligations during a resolution proceeding. The proposed rule instead seeks to ensure that each Enterprise is capitalized to remain a viable going concern both during and after a severe economic downturn, as discussed in Section III.B.2. Historical experience has established that credit, market, and operational losses can be incurred quickly during a stress, and it is an Enterprise's capacity to absorb those losses as incurred that defines creditors' and other counterparties' views as to whether the financial institution is a viable going concern. As discussed in Sections III.B.2 and III.B.3, market confidence in the Enterprises waned in mid-2008 when Fannie Mae and Freddie Mac had total capital of, respectively, $55.6 billion and $42.9 billion, notwithstanding their right to future guarantee fees.

FHFA's approach does, however, still give consideration to the loss-absorbing capacity of future guarantee fees or other revenues. As discussed in Section VII.A.1, FHFA has calibrated the stress capital buffer as the amount of regulatory capital sufficient for an Enterprise to withstand a severely adverse stress and still remain above the capital requirements.[46] Under this calibration methodology, the stress capital buffer has been sized based on net capital exhaustion in a severely adverse scenario. The determination of net capital exhaustion takes into account the guarantee fees and other revenues received during that stress.

2. Components of Regulatory Capital

a. CET1 Capital

Consistent with the Basel and U.S. banking frameworks, CET1 capital would be the sum of an Enterprise's outstanding CET1 capital instruments that satisfy the criteria set forth below, related surplus (net of treasury stock), retained earnings, and AOCI, less regulatory adjustments and deductions.

The criteria for CET1 capital instruments are intended to ensure that CET1 capital instruments do not possess features that would cause an Enterprise's condition to further weaken during a period of financial stress. The CET1 capital instruments are any common stock instruments (plus any related surplus) issued by the Enterprise, net of treasury stock, that meet the criteria specified at § 1240.20(b)(1).

b. Additional Tier 1 Capital

Consistent with the Basel and U.S. banking frameworks, additional tier 1 capital would equal the sum of the additional tier 1 capital instruments that satisfy the criteria set forth at § 1240.20(c)(1) and related surplus, less applicable regulatory adjustments and deductions. The criteria are intended to ensure that additional tier 1 capital instruments would be available to absorb losses on a going-concern basis.

An Enterprise would not be permitted to include an instrument in its additional tier 1 capital unless FHFA has determined that the Enterprise has made appropriate provision, including in any resolution plan of the Enterprise, to ensure that the instrument would not pose a material impediment to the ability of an Enterprise to issue common stock instruments following any future appointment of FHFA as conservator or receiver under the Safety and Soundness Act.

c. Tier 2 Capital

Adjusted total capital would be the sum of CET1 capital, additional tier 1 capital, and tier 2 capital. Generally consistent with the Basel and U.S. banking frameworks, tier 2 capital would equal the sum of: Tier 2 capital instruments that satisfy the criteria set forth at § 1240.20(d)(1); related surplus; and limited amounts of excess credit reserves, less any applicable regulatory adjustments and deductions.

As under the U.S. banking framework for advanced approaches banking organizations, an Enterprise may include in tier 2 capital only the excess of its eligible credit reserves over its total expected credit loss, provided the amount does not exceed 0.6 percent of its credit risk-weighted assets. The limited inclusion of ALLL in tier 2 capital is a logical outgrowth of FHFA's calibration methodology for mortgage exposures under which the base risk weights and risk multipliers are intended to require credit risk capital sufficient to absorb the lifetime *unexpected* losses incurred on mortgage exposures experiencing a shock to house prices similar to that observed during the 2008 financial crisis. The same is also true for non-mortgage exposures, where FHFA generally has adopted the credit risk capital requirements of the U.S. banking framework, which also calibrates credit risk capital requirements to absorb unexpected losses.

An alternative approach perhaps could be to include general ALLL in adjusted total capital and then calibrate the credit risk capital requirements based on stress losses (*i.e.,* unexpected and expected losses). The resulting required loss-absorbing capacity for a mortgage exposure would be substantially the same. That approach however would raise safety and soundness risk relating to the loss-absorbing capacity of each Enterprise's ALLL in a period of financial stress, particularly if there is no limit on the share of total capital that may be ALLL. An approach that calibrates credit risk capital requirements based on stress losses also would limit FHFA's ability to rely on the credit risk capital requirements under the U.S. banking framework for non-mortgage exposures, an important consideration to the extent that FHFA does not have the data or models to calibrate its own credit risk capital requirements for non-mortgage exposures.

As with additional tier 1 capital, an Enterprise would not be permitted to include an instrument in its tier 2 capital unless FHFA has determined that the Enterprise has made appropriate provision, including in any resolution plan of the Enterprise, to ensure that the instrument would not pose a material impediment to the ability of an Enterprise to issue common stock instruments following any future appointment of FHFA as conservator or

[46] *See* BCBS, *Calibrating Regulatory Minimum Capital Requirements and Capital Buffers: A Top-down Approach,* paragraph I.A. (Oct. 2010) (''[T]he regulatory minimum requirement is the amount of capital needed for a bank to be regarded as a viable going concern by creditors and counterparties, while a buffer can be seen as an amount sufficient for the bank to withstand a significant downturn period and still remain above minimum regulatory levels.''), available at *https://www.bis.org/publ/bcbs180.pdf;* and Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions, 78 FR 51101, 51105 (Aug. 20, 2013) (Joint Agency Proposed Rule) (''In calibrating the revised risk-based capital framework, the BCBS identified those elements of regulatory capital that would be available to absorb unexpected losses on a going-concern basis. The BCBS agreed that an appropriate regulatory minimum level for the risk-based capital requirements should force banking organizations to hold enough loss-absorbing capital to provide market participants a high level of confidence in their viability.'').

receiver under the Safety and Soundness Act.

Question 1. Is each of the definitions of CET1 capital, tier 1 capital, and tier 2 capital appropriately formulated and tailored to the Enterprises?

Question 2. Should FHFA include additional amounts of an Enterprise's ALLL or excess credit reserves in any of the components of regulatory capital?

Question 3. Should any other capital elements qualify as CET1 capital, additional tier 1 capital, or tier 2 capital elements?

3. Regulatory Adjustments and Deductions

a. Deductions From CET1 Capital

Under the U.S. banking framework, goodwill and other intangible assets have long been either fully or partially excluded from regulatory capital because of the high level of uncertainty regarding the ability of a banking organization to realize value from these assets, especially under adverse financial conditions. The regulatory capital treatment of DTAs has posed particular safety and soundness risks for the Enterprises, as discussed in Section IV.B.1. The proposed rule would require an Enterprise to deduct from CET1 capital elements:

- Goodwill;
- Intangible assets other than mortgage-servicing assets (MSA) net of associated deferred tax liabilities (DTLs);
- DTAs that arise from net operating loss and tax credit carryforwards net of any related valuation allowances and net of DTLs in accordance with certain restrictions discussed under Section V.B.3.d; and
- Any defined benefit pension fund net asset, net of DTLs in accordance with certain DTL-related restrictions, and subject to certain exceptions with FHFA's approval.

An Enterprise also would deduct from CET1 capital any after-tax gain-on-sale associated with a securitization exposure. Gain-on-sale would be defined as an increase in the equity capital of an Enterprise resulting from a traditional securitization other than an increase in equity capital resulting from (i) the Enterprise's receipt of cash in connection with the securitization or (ii) reporting of a mortgage servicing asset.

Finally, an Enterprise also would deduct from CET1 capital the amount of expected credit loss that exceeds the Enterprise's eligible credit reserves. Eligible credit reserves would be defined as all general allowances that have been established through a charge against earnings to cover estimated credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the ALLL associated with such exposures, but excluding other specific reserves created against recognized losses.

b. Adjustments to CET1 Capital

An Enterprise would subtract from CET1 capital any accumulated net gains and add any accumulated net losses on cash-flow hedges included in AOCI that relate to the hedging of items that are not recognized at fair value on the balance sheet. This adjustment would remove an element that gives rise to artificial volatility in CET1 capital as it would avoid a situation in which the changes in the fair value of the cash-flow hedge are reflected in regulatory capital but the changes in the fair value of the hedged item is not.

An Enterprise also would be required to deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the Enterprise's own credit risk. An Enterprise must deduct the difference between its credit spread premium and the risk-free rate for derivatives that are liabilities as part of this adjustment.

To avoid the double-counting of regulatory capital, an Enterprise would deduct the amount of its investments in its own capital instruments, including direct and indirect exposures, to the extent such instruments are not already excluded from regulatory capital. Specifically, an Enterprise would deduct its investment in its own CET1, additional tier 1, and tier 2 capital instruments from the sum of its CET1, additional tier 1, and tier 2 capital, respectively. In addition, any CET1, additional tier 1, or tier 2 capital instrument issued by an Enterprise that the Enterprise could be contractually obligated to purchase also would be deducted from CET1, additional tier 1, or tier 2 capital elements, respectively.

c. Items Subject to the 10 and 15 Percent CET1 Capital Threshold Deductions

An Enterprise would deduct from its CET1 capital the amount of each of the following items that individually exceeds the 10 percent CET1 capital deduction threshold described below:

- DTAs arising from temporary differences that could not be realized through net operating loss carrybacks (net of any related valuation allowances and net of DTLs in accordance with certain restrictions discussed under Section V.B.3.d); and
- MSAs, net of associated DTLs in accordance with certain restrictions discussed under Section V.B.3.d.

An Enterprise would calculate the 10 percent CET1 capital deduction threshold by taking 10 percent of the sum of an Enterprise's CET1 elements, less the adjustments to, and deductions from, CET1 capital discussed above.

The aggregate amount of the items subject to the threshold deductions that are not deducted as a result of the 10 percent CET1 capital deduction threshold must not exceed 15 percent of an Enterprise's CET1 capital, as calculated after applying all regulatory adjustments and deductions required under the proposed rule (the 15 percent CET1 capital deduction threshold). That is, an Enterprise would deduct in full the amounts of the items subject to the threshold deductions on a combined basis that exceed 17.65 percent (the proportion of 15 percent to 85 percent) of CET1 capital, less all regulatory adjustments and deductions required for the calculation of the 10 percent CET1 capital deduction threshold mentioned above, and less the items subject to the 10 and 15 percent deduction thresholds.

d. Netting of Deferred Tax Liabilities Against Deferred Tax Assets and Other Deductible Assets

An Enterprise would be permitted to net DTLs against assets (other than DTAs) subject to deduction under the proposed rule, provided the DTL is associated with the asset and the DTL would be extinguished if the associated asset becomes impaired or is derecognized under GAAP. An Enterprise would be prohibited from using the same DTL more than once for netting purposes.

With respect to the netting of DTLs against DTAs, the amount of DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and the amount of DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances, could be netted against DTLs if certain conditions are met.

VI. Capital Requirements

A. Risk-Based Capital Requirements

1. Supplemental Requirements

FHFA is proposing to require the Enterprises to maintain the following risk-based capital:

- Total capital not less than 8.0 percent of risk-weighted assets;
- Adjusted total capital not less than 8.0 percent of risk-weighted assets;
- Tier 1 capital not less than 6.0 percent of risk-weighted assets; and
- CET1 capital not less than 4.5 percent of risk-weighted assets.

As discussed in Section III.B.3, a lesson of the 2008 financial crisis is that the Enterprises' safety and soundness depends not only on the quantity but also on the quality of their capital. To that end, FHFA is proposing to supplement the risk-based capital requirement based on statutorily defined total capital with additional risk-based capital requirements based on the Basel framework's definitions of total capital, tier 1 capital, and CET1 capital.

As discussed in Section IV.B.1, FHFA noted in the 2018 proposal that the Enterprises' DTAs, which are included in total capital and core capital by statute, ''may provide minimal to no loss-absorbing capability during a period of [financial] stress as recoverability (via taxable income) may become uncertain.'' [47] The 2018 proposal addressed this issue by establishing a risk-based capital requirement for DTAs. However, the 2018 proposal did not include adjustments for other capital elements that tend to have less loss-absorbing capacity during a financial stress (*e.g.,* ALLL, goodwill, and intangibles), although FHFA did request comment on how best to compensate for the loss-absorbing deficiencies of ALLL and preferred stock within the framework of the 2018 proposal. The 2018 proposal also requested comment on, but did not adjust for, AOCI, leaving open the possibility that an Enterprise could have positive total capital and core capital despite being insolvent under GAAP. The supplemental risk-based capital requirements for adjusted total capital, tier 1 capital, and CET1 capital would address these safety and soundness issues to the extent, as discussed in Section V.B, the underlying regulatory capital definitions incorporate deductions and other adjustments for those capital elements that tend to have less loss-absorbing capacity.

Related to this, one of the lessons of the 2008 financial crisis is that retained earnings and other high-quality capital should be the predominant form of regulatory capital. In addition to not limiting the extent to which general ALLL counted toward regulatory capital, the 2018 proposal did not limit the extent to which preferred shares could satisfy the risk-based capital requirements, although FHFA did solicit comment on these issues. Specifically, there was neither a risk-based capital requirement for core capital nor a requirement that retained earnings and other common equity be the predominant form of capital. The risk-based capital requirements for tier 1 capital and CET1 capital would address this safety and soundness issue in a way that should be familiar to market participants.

2. Risk-Weighted Assets

An Enterprise would determine its risk-weighted assets under two approaches—a standardized approach and an advanced approach—with the greater of the two used to determine its risk-based capital requirements. Under both approaches, an Enterprise's risk-weighted assets would equal the sum of its credit risk-weighted assets, market risk-weighted assets, and operational risk-weighted assets.

Specifying each of the aggregate risk-based capital requirements as a percent of risk-weighted assets is a change from the 2018 proposal, but the change itself would not impact the quantity of required total capital. Both under the 2018 proposal and the proposed rule, and consistent with the Basel and U.S. banking frameworks,[48] the risk-based capital requirements should be calibrated to require each Enterprise to hold enough loss-absorbing capital to maintain the confidence of creditors and other counterparties in its viability as a going concern. More specifically, FHFA calibrated the credit risk capital requirements for mortgage exposures to require capital sufficient to absorb the lifetime unexpected losses incurred on exposures experiencing a shock to house prices similar to that observed during the 2008 financial crisis, as discussed in Sections VIII.A.2 and VIII.B.2. The base risk weight for a mortgage exposure is equal to the adjusted total capital requirement for the exposure expressed in basis points and divided by 800, which is the 8.0 percent adjusted total capital requirement also expressed in basis points. Expressing the risk-based capital requirement for an exposure as a risk weight, or the aggregate risk-based capital requirement as a percent of risk-weighted assets, is simply a matter of terminology.

Although the shift to a terminology of risk-weighted assets is more form than substance, FHFA has made this change for at least two reasons. First, the addition of three new risk-based capital requirements raises the need for a straightforward mechanism to specify the aggregate regulatory capital required for each. Risk-weighted assets accomplishes this by offering a common denominator across the 2018 proposal's risk-based total capital requirement and the supplemental risked-based capital requirements contemplated by the proposed rule. Second, this approach and its associated terminology are well-understood by those familiar with the U.S. banking framework. Expressing the risk-based capital requirement for an exposure as a risk-weight will facilitate transparency and comparability with the U.S. banking framework and other regulatory capital frameworks. Because these concepts are well-understood, this approach also should facilitate market discipline over each Enterprise's risk-taking by its creditors and other counterparties.

B. Leverage Ratio Requirements

1. Adjusted Total Assets

Each Enterprise would be required to maintain capital sufficient to satisfy the following leverage ratio requirements:

- Core capital not less than 2.5 percent of adjusted total assets; and
- Tier 1 capital not less than 2.5 percent of adjusted total assets.

Adjusted total assets would be defined as total assets under GAAP, with adjustments to include many of the off-balance sheet and other exposures that are included in the supplemental leverage ratio requirements of the U.S. banking framework.

2. Tier 1 Leverage Ratio Requirement

As with the risk-based capital requirements, and as discussed in Section IV.B.1, the proposed rule would supplement the core capital leverage ratio requirement with a leverage ratio requirement based on a definition of regulatory capital, here tier 1 capital, that has deductions and other adjustments for capital elements that tend to have less loss-absorbing capacity during a period of financial stress. Tier 1 capital is also a well-understood concept for market participants familiar with the U.S. banking framework. That in turn would facilitate transparency and comparability with the leverage ratio requirements for U.S. banking organizations, as well as market discipline by the Enterprises' creditors and other counterparties.

3. Sizing of the Requirements

The primary purpose of the leverage ratio requirements is to provide a credible, non-risk-based backstop to the risk-based capital requirements to safeguard against model risk and

[47] 83 FR at 33388.

[48] 78 FR at 51105 (''In calibrating the revised risk-based capital framework, the BCBS identified those elements of regulatory capital that would be available to absorb unexpected losses on a going-concern basis. The BCBS agreed that an appropriate regulatory minimum level for the risk-based capital requirements should force banking organizations to hold enough loss-absorbing capital to provide market participants a high level of confidence in their viability.'').

measurement error with a simple, transparent, independent measure of risk. From a safety-and-soundness perspective, each type of requirement offsets potential weaknesses of the other, and well-calibrated risk-based capital requirements working with a credible leverage ratio requirement are more effective than either type would be in isolation. The leverage ratio requirements would have the added benefit of dampening some of the pro-cyclicality inherent in the aggregate risk-based capital requirements. The core capital leverage ratio requirement also would replace the current statutory leverage ratio requirement for purposes of the corrective action provisions of the Safety and Soundness Act.

FHFA has sized the leverage ratio requirements to be a credible backstop to the risk-based capital requirements, taking into account the analogous leverage ratio requirements of U.S. banking organizations and the Federal Home Loan Banks, considerations relating to the Enterprises' historical loss experiences, and the model and related risks posed by the calibration of the risk-based capital requirements.

First, the proposed leverage ratio requirements are generally aligned with the analogous leverage ratio requirements of U.S. banking organizations and the Federal Home Loan Banks. The U.S. banking framework's leverage ratio requirement requires banking organizations maintain tier 1 capital no less than 4.0 percent of total assets. Insured depository institutions subsidiaries of certain large U.S. bank holding companies also must maintain tier 1 capital no less than 6.0 percent of total assets to be ''well capitalized.''[49] Using data for the 18 bank holding companies subject to the Federal Reserve Board's supervisory stress testing program in 2018, FHFA determined that the average risk weight on the assets of these banks was 61 percent in the fourth quarter of 2018. Under the U.S. banking framework, the Enterprises' mortgage assets generally would be assigned a 50 percent risk weight under the standardized approach. This suggests that the average risk weight on the assets of the Enterprises would have been approximately 81 percent (50 percent divided by 61 percent) of that of these large bank holding companies. That in turn implies a risk-adjusted analogous leverage ratio requirement for the Enterprises of 3.3 percent (81 percent of the 4.0 percent leverage ratio requirement for U.S. banking organizations).[50]

While the interest rate and funding risks of the Enterprises and U.S. banking organizations are different, the Basel and U.S. banking frameworks generally do not contemplate an explicit capital requirement for interest rate risk on banking book exposures given the absence of a consensus as to how to quantify that capital requirement, instead leaving interest rate risk capital requirements to bank-specific tailoring through the supervisory process.[51] The differences in the interest rate and funding risk profiles therefore should not preclude comparisons to the U.S. banking framework's leverage ratio requirements, subject to adjustments for the different credit risk profiles of the Enterprises and U.S. banking organizations (as described above). Further, the monoline nature of the Enterprises' mortgage-focused businesses suggests that the concentration risk of an Enterprise is greater than that of a diversified banking organization with a similar amount of mortgage credit risk, perhaps meriting a higher leverage ratio requirement, all else equal.

The Federal Home Loan Banks also must maintain total capital no less than 4.0 percent of total assets. That 4.0 percent leverage ratio requirement should be considered in the context of the safety and soundness benefits of the statutory requirement that each Federal Home Loan Bank advance be fully secured. Related to that, the safety and soundness benefits of that collateral might be furthered by law, as any security interest granted to a Federal Home Loan Bank by a member (or affiliate of a member) is, with some exceptions, entitled by statute to priority over the claims and rights of any other party, including any receiver, conservator, trustee, or similar party having rights of a lien creditor.

Second, the proposed leverage ratio requirements are broadly consistent with the Enterprises' historical loss experiences. As discussed in Sections II.D.3 and III.B.1, the Enterprises' crisis-era cumulative capital losses peaked at the end of 2011 at $265 billion, approximately 4.8 percent of their adjusted total assets as of December 31, 2007. Setting aside the valuation allowances on their DTAs, which are subject to deductions and other adjustments to CET1 capital (and therefore tier 1 and adjusted total capital) under the proposed rule, the Enterprises' crisis-era peak cumulative capital losses were $167 billion, approximately 3.0 percent of their total assets as of December 31, 2007. Notably even these DTA-adjusted capital losses exceeded by $36 billion the tier 1 capital that would have been required under the 2.5 percent leverage ratio requirement as of December 31, 2007.

FHFA recognizes that a portion of the crisis-era losses arose from single-family loans that are no longer eligible for acquisition by the Enterprises. However, the sizing of regulatory capital requirements must take into account the modeling risk posed by the attribution of such losses to specific product characteristics, as discussed in Section IV.B.2. The sizing of the regulatory capital requirements also must guard against potential future relaxation of underwriting standards and regulatory oversight over those underwriting standards.

The Enterprises' historical loss experiences actually might tend to understate the regulatory capital that would be necessary to remain a viable going concern to creditors and other counterparties. As discussed in Section III.B.1, the Enterprises' crisis-era losses likely were mitigated to at least some extent by the unprecedented support by the federal government of the housing market and the economy and also by the declining interest rate environment of the period. The calibration of the leverage ratio requirement and other required capital requirements cannot assume a repeat of those loss mitigants. Also, as discussed in Section IV.B.2, there are some material risks to the Enterprises that are not assigned a risk-based capital requirement—for example, risks relating to uninsured or underinsured losses from flooding, earthquakes, or other natural disasters or radiological or biological hazards. There also is no risk-based capital requirement for the risks that climate change could pose to property values in some localities.

Third, certain risks and limitations associated with the underlying

[49] *See, e.g.,* 12 CFR 6.4(b)(1)(i)(D).

[50] That U.S. banking framework's 3 percent supplemental leverage ratio requirement is an inappropriate comparable for sizing the Enterprises' leverage ratio requirements. Approximately 95 percent of the Enterprises' adjusted total assets are GAAP total assets that are subject to the U.S. banking framework's 4 percent leverage ratio requirement. The primary exception is off-balance sheet guarantees on loans and securities, principally Freddie Mac's K-deals, but these amounts are small relative to the Enterprises' total assets under GAAP.

[51] *See* BCBS, *Interest Rate Risk in the Banking Book,* paragraph 1, (April 2016), available at *https://www.bis.org/bcbs/publ/d368.pdf;* (''Interest rate risk in the banking book (IRRBB) is part of the Basel capital framework's Pillar 2 (Supervisory Review Process) and subject to the Committee's guidance set out in the 2004 Principles for the management and supervision of interest rate risk (henceforth, the IRR Principles).'').

historical data and models used to calibrate the credit risk capital requirements reinforce the importance of leverage ratio requirements that safeguard against model risk and measurement error. There is inevitably a trade-off between, on the one hand, preserving the mortgage risk-sensitive framework of the 2018 proposal and, on the other hand, managing the model and related risks associated with any methodology for developing a granular assessment of credit risk specific to different mortgage loan categories. As discussed in Section IV.B.2, a disproportionate share of the Enterprises' crisis-era losses arose from certain single-family mortgage exposures that are no longer eligible for acquisition by the Enterprises. The calibration of the credit risk capital requirements attributed a significant portion of the Enterprises' crisis-era losses (approximately $108 billion) to these products. The statistical methods used to allocate losses between borrower-related risk attributes and product-related risk attributes pose significant model risk. It is possible that the calibration understates the credit losses that would be incurred in an economic downturn with national housing price declines of similar magnitude, even assuming a repeat of crisis-era Federal support of the economy and the declining interest rate environment. To this point, as discussed in Section VIII.A.7, had the proposed rule been in effect on December 31, 2007, the credit risk capital requirements still would not have been sufficient to absorb the projected lifetime credit losses on Freddie Mac's single-family book. Under a dynamic framework, the aggregate credit risk capital requirements would have increased in subsequent years as losses were incurred, while there also would have been material uncertainty as to an Enterprise's ability to raise sufficient quantities of new capital during a period of financial stress and significant losses.

The risk-based capital requirements should, as a general rule, exceed the regulatory capital required under the leverage ratio requirements. At the same time, if the tier 1 leverage ratio requirement is to be an independently meaningful and credible backstop, there will inevitably be some exceptions in which the tier 1 leverage ratio requirement requires more regulatory capital than the risk-based capital requirements. In FHFA's view, the measurement period of September 30, 2019 is, in fact, consistent with the circumstances under which a credible leverage ratio would be binding, given the exceptional single-family house price appreciation since 2012, the strong credit performance of both single-family and multifamily mortgage exposures, the significant progress by the Enterprises to materially reduce legacy exposure to NPLs and re-performing loans, robust CRT market access enabling substantial risk transfer, and the generally strong condition of key counterparties, such as mortgage insurers.

Question 4. Is the tier 1 leverage ratio requirement appropriately sized to serve as a credible backstop to the risk-based capital requirements?

Question 5. Should the Enterprise's leverage ratio requirements be based on total assets, as defined by GAAP, the Enterprise's adjusted total assets, or some other basis?

C. Enforcement

FHFA may draw upon several authorities to address potential Enterprise failures to meet the proposed rule's capital requirements set forth in VI.A and VI.B. A failure to maintain regulatory capital in excess of each of these capital requirements may result in one or more enforcement consequences. In all cases, the FHFA Director retains the authority to determine the appropriate enforcement consequence.

The Safety and Soundness Act authorizes FHFA to establish capital levels for an Enterprise by regulation.[52] An Enterprise failure to meet a capital threshold that is required by regulation may be addressed through enforcement mechanisms for regulatory violations including procedures for cease and desist and consent orders.[53] Through a cease and desist or consent order, FHFA could require an Enterprise to develop and implement a capital restoration plan, restrict asset growth or activities, and take other appropriate action to remediate the violation of law.

FHFA may also use the enforcement tools available under its authority to prescribe and enforce prudential management and operations standards (PMOS).[54] The proposed rule, other than the PCCBA, the PLBA, and the associated payout restrictions, would be prescribed as a PMOS guideline that may be enforced under these PMOS authorities. The PMOS statute and rule include enforcement remedies similar, although not identical, to those under the Prompt Corrective Action (PCA) framework discussed below, focusing on a remediation plan and such other measures as the Director deems appropriate, but not conservatorship or receivership. The FHFA Director may require as part of a remediation plan (which is to be developed within a timeline in the PMOS regulation) restrictions on capital distributions, restrictions on asset growth, activities, and acquisitions, a requirement for new capital-raising, and other restrictions as appropriate.

The PCA framework set out in the Safety and Soundness Act[55] also provides for enforcement tools when a shortfall occurs in capital requirements that are set forth in the statute, using the statute's prescribed capital concepts. The PCA establishes four capital categories with associated increasingly severe enforcement tools: ''adequately capitalized,'' ''undercapitalized,'' ''significantly undercapitalized,'' and ''critically undercapitalized.'' Under the PCA framework, the principal remedial tool is a recapitalization plan, and other tools include restrictions on capital distributions and asset growth, prior approval of acquisitions and new activities, improvement of management, and restriction on compensation. In serious enough conditions, such as critical undercapitalization, the PCA provides that an Enterprise can be placed in conservatorship or receivership. In addition, the PCA provisions provide for an Enterprise to be downgraded if alternative specified conditions are met. One of those conditions is that an Enterprise is in ''an unsafe or unsound condition,'' as determined by FHFA after notice and opportunity for a hearing.

The proposed rule would include a leverage requirement and a risk-based capital requirement using the concepts of total capital and core capital as defined in the Safety and Soundness Act. The PCA enforcement framework applies to an Enterprise's failure to meet either of these statutorily based capital requirements. In addition, FHFA could enforce the core capital and total capital requirements under its authority to issue an order to cease and desist from a violation of law or under its PMOS authority.

FHFA recognizes that there may be very particular economic circumstances during which an Enterprise may meet its risk-based capital requirement to maintain total capital in excess of 8.0 percent of risk-weighted assets, but fails to meet the leverage ratio requirement of core capital in excess of 2.5 percent of adjusted total assets. This situation falls outside of the PCA capital classifications and enforcement

[52] 12 U.S.C. 4526, 4611, 4612(c).

[53] 12 U.S.C. 4581, 12 CFR part 1209.

[54] 12 U.S.C. 4513b; 12 CFR part 1236.

[55] 12 U.S.C. 4614 *et seq.*

framework, but FHFA could address a shortfall through its PMOS or other regulatory enforcement authorities. If appropriate to provide greater clarity to the Enterprises and other market participants, FHFA may issue supervisory guidance regarding progressive application of its enforcement authorities as the capital position of an Enterprise declines.

Question 6. Should FHFA consider any changes to its contemplated enforcement framework? What supervisory guidance would be helpful to promote market understanding of how FHFA expects to apply its enforcement authorities?

Question 7. Should any of the risk-based capital requirements or leverage ratio requirements be phased-in over a transition period?

Question 8. Alternatively, should the enforcement of the risk-based capital requirements during the implementation of a capital restoration plan be tailored through a consent order or other similar regulatory arrangement, and if so how?

VII. Capital Buffers

A. Prescribed Capital Conservation Buffer Amount (PCCBA)

FHFA is proposing to supplement certain of the risk-based capital requirements with a PCCBA. To avoid limits on capital distributions and discretionary bonus payments, an Enterprise would have to maintain regulatory capital that exceeds each of its adjusted total capital, tier 1 capital, and CET1 capital requirements by at least the amount of its PCCBA. That PCCBA would consist of three separate component buffers—a stress capital buffer, a countercyclical capital buffer, and a stability capital buffer.

The PCCBA would be determined as a percent of an Enterprise's adjusted total assets.[56] Fixing the PCCBA at a specified percent of an Enterprise's adjusted total assets, instead of risk-weighted assets, is a notable departure from the Basel framework. FHFA intends a fixed-percent PCCBA, among other things, to reduce the impact that the PCCBA potentially could have on higher risk exposures, avoid amplifying the secondary effects of any model or similar risks inherent to the calibration of granular risk weights for single-family and multifamily mortgage exposures, and further mitigate the pro-cyclicality of the aggregate risk-based capital requirements.

1. Stress Capital Buffer

An Enterprise's stress capital buffer would equal 0.75 percent of the Enterprise's adjusted total assets. The proposed stress capital buffer is similar in amount and rationale to the 0.75 percent going-concern buffer contemplated by the 2018 proposal. The 2018 proposal acknowledged that each Enterprise is required by charter to provide stability and ongoing assistance to the secondary mortgage market during and after a period of severe financial stress. The 2018 proposal also observed that ''[r]aising new capital during a period of severe housing market stress . . . would be very expensive, if not impossible; therefore, the [2018 proposal] would require the Enterprises to hold additional capital on an on-going basis ('going-concern buffer') in order to continue purchasing exposures and to maintain market confidence during a period of severe distress.''

An important difference is that the 2018 proposal's going-concern buffer would have been a component of the risk-based capital requirement, such that failure to maintain the regulatory capital required by the going-concern buffer could have triggered significant regulatory sanctions. In contrast, the proposed rule converts the 2018 proposal's going-concern buffer into a component of the capital conservation buffer that FHFA intends to be available for an Enterprise to draw down during a period of financial stress. As discussed in Section II.D, the potential for less punitive sanctions for drawing down the capital conservation buffer should position each Enterprise to play a countercyclical role in the market, and would have the further benefit of reducing the managerial capital cushion that an Enterprise might be expected to maintain above the regulatory capital requirements.

For the reasons given in Section III.B.2, and as contemplated for banking organizations by the Basel and U.S. banking frameworks,[57] each Enterprise should be capitalized to remain a viable going concern both during and after a severe economic downturn. While the proposed regulatory capital requirements are sized to ensure an Enterprise would be regarded as a viable going concern by creditors and other counterparties, the stress capital buffer is sized to ensure that the Enterprise would, in ordinary times, maintain regulatory capital that could be drawn down during a financial stress and still be regarded as a viable going concern after that stress.

To a similar end, FHFA sized the 2018 proposal's going-concern buffer based on the Enterprises' Dodd Frank Act Stress Test (DFAST) results for the severely adverse scenario. Specifically, ''FHFA calculated the amount of capital necessary for the Enterprises to meet a 2.5 percent leverage requirement at the end of each quarter of the simulation of the severely adverse DFAST scenario (without DTA valuation allowance) and compared that amount to the aggregate risk-based capital requirement. The difference between these two measures provided an indicator for the size of the going-concern buffer.''

As further validation of the sizing of the stress capital buffer, FHFA's 2018 proposal compared the regulatory capital obtained by applying the going-concern buffer to the 2017 single-family book of business with the regulatory capital required to fund each Enterprise's 2017 new acquisitions. FHFA found the proposed going-concern buffer would provide sufficient capital for each Enterprise to fund an additional one to two years of new acquisitions comparable to their 2017 new acquisitions. FHFA continues to believe that 2018 proposal's approach provides a strong indicator for the appropriate size of the stress capital buffer that replaces the going-concern buffer.

FHFA has also looked to the sizing of analogous buffers under the Basel and U.S. banking frameworks. As recently amended by the Federal Reserve Board, the U.S. banking framework requires each U.S. banking organization to maintain a stress capital buffer that exceeds its regulatory capital requirements by at least 2.5 percent of its risk-weighted assets, potentially more depending on its peak cumulative capital exhaustion under its supervisory stress test. Under the current average risk weight for the Enterprises' exposures of 28 percent, the proposed stress capital buffer is equivalent to 2.68

[56] The stress capital buffer and the countercyclical capital buffer amount could vary, which would then result in a change in the Enterprise's PCCBA when expressed as a percent of the Enterprise's adjusted total assets.

[57] 78 FR at 51105 (''In calibrating the revised risk-based capital framework, the BCBS identified those elements of regulatory capital that would be available to absorb unexpected losses on a going-concern basis. The BCBS agreed that an appropriate regulatory minimum level for the risk-based capital requirements should force banking organizations to hold enough loss-absorbing capital to provide market participants a high level of confidence in their viability. The BCBS also determined that a buffer above the minimum risk-based capital requirements would enhance stability, and that such a buffer should be calibrated to allow banking organizations to absorb a severe level of loss, while still remaining above the regulatory minimum requirements.'').

percent of the Enterprises' risk-weighted assets.

While the proposed rule contemplates a stress capital buffer sized as a fixed-percent of an Enterprise's adjusted total assets, FHFA is also seeking comment on an alternative under which FHFA would implement an approach similar to that of the Federal Reserve Board and periodically re-size the stress capital buffer to the extent that FHFA's eventual program for supervisory stress tests determines that an Enterprise's peak capital exhaustion under a severely adverse stress would exceed 0.75 percent of adjusted total assets. Under this approach, the stress capital buffer would still be determined as a percent of adjusted total assets, not risk-weighted assets. A dynamically re-sized stress capital buffer would be more risk-sensitive than a fixed-percent stress capital buffer, varying in amount across the economic cycle and also varying with the riskiness of the Enterprise's mortgage exposures. An approach that leverages a supervisory stress test could also incorporate assumptions as to the continued availability of CRT during a period of financial stress.

Related to this, FHFA's proposal to incorporate into each Enterprise's PCCBA a stress capital buffer should not be construed to imply or otherwise suggest that a similar buffer would necessarily be appropriate for other market participants in the housing finance system. Some of the Enterprises' counterparties, and some other market participants in the housing finance system, need not necessarily be capitalized to remain a viable going concern both during and after a severe economic downturn. For these market participants, calibrating capital adequacy based on ''claims paying capacity'' or an insurance-like or similar standard might be appropriate in light of their size and role in the housing finance system.

Question 9. Is the stress capital buffer appropriately formulated and calibrated?

Question 10. Should an Enterprise's stress capital buffer be periodically re-sized to the extent that FHFA's eventual program for supervisory stress tests determines that an Enterprise's peak capital exhaustion under a severely adverse stress would exceed 0.75 percent of adjusted total assets?

Question 11. Should an Enterprise's stress capital buffer be adjusted as the average risk weight of its mortgage exposures and other exposures changes?

Question 12. Should an Enterprise's stress capital buffer be based on the Enterprise's adjusted total assets or risk-weighted assets?

2. Countercyclical Capital Buffer

The U.S. banking regulators adopted a countercyclical capital buffer for certain large U.S. banking organizations in June 2013, which has been and remains set at 0 percent of risk-weighted assets. The countercyclical capital buffer aims to ensure that banking sector capital requirements take into account the macro-financial environment in which banks operate.[58] The buffer is to be deployed when excess aggregate credit growth is judged to be associated with a build-up of system-wide risk to ensure the banking system has a buffer of capital to protect it against future potential losses. This focus on excess aggregate credit growth means that the buffer is likely to be deployed on an infrequent basis.

As is currently the case under the U.S. banking framework, the countercyclical capital buffer for the Enterprises would initially be set at 0 percent of adjusted total assets. FHFA does not expect to adjust this buffer in the place of, or to supplement, the countercyclical adjustment to the risk-based capital requirements for single-family mortgage exposures discussed in Section VIII.A.4. Instead, as under the Basel and U.S. banking frameworks, FHFA would adjust the countercyclical capital buffer taking into account the macro-financial environment in which the Enterprises operate, such that it would be deployed only when excess aggregate credit growth is judged to be associated with a build-up of system-wide risk. This focus on excess aggregate credit growth means the countercyclical buffer likely would be deployed on an infrequent basis, and generally only when similar buffers are deployed by the U.S. banking regulators. Any adjustment to the countercyclical capital buffer would be made in accordance with applicable law and after appropriate notice to the Enterprises.

Question 13. Is the countercyclical capital buffer appropriately formulated?

Question 14. What administrative or other process should govern FHFA's adjustments to the countercyclical capital buffer?

Question 15. Should FHFA more explicitly base its determination to adjust the countercyclical capital buffer to the determination of the U.S. banking regulators to adjust their similar buffer?

[58] BCBS, *Basel: A Global Regulatory Framework for More Resilient Banks and Banking Systems,* paragraph 137 (Dec. 2010; revised June 2011), available at *http://www.bis.org/publ/bcbs189.htm.*

3. Stability Capital Buffer

a. Comments on the 2018 Proposal

FHFA received several comment letters on the 2018 proposal that argued that FHFA did not adequately address the risk posed by the size and importance of the Enterprises, particularly in light of the fact that during the 2008 financial crisis, the Enterprises proved to be ''too-big-to-fail.'' Multiple commenters recommended FHFA consider adding a capital buffer due to the size of the Enterprises' footprints. Other commenters suggested FHFA address the Enterprises' size and importance in different ways, such as through the leverage ratio, through the credit risk capital grids, or with an asset-level surcharge that differed by the riskiness of the activity.

b. U.S. Banking Framework

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) mandates that the Federal Reserve Board adopt, among other prudential measures, enhanced capital standards to mitigate the risk posed to financial stability by systemically important financial institutions. The Federal Reserve Board has implemented a number of measures designed to strengthen firms' capital positions in a manner consistent with the Dodd-Frank Act's requirement that such measures increase in stringency based on the systemic importance of the firm.

The Federal Reserve Board has also finalized capital surcharges for the U.S. banking organizations of the greatest systemic importance that have been deemed global systemically important bank holding companies (GSIBs). These GSIB capital surcharges are calibrated based on the Federal Reserve Board's measures of each GSIB's systemic footprint under an ''expected impact'' framework that considers the harm that the GSIB's failure would cause to the financial system as adjusted by the likelihood that the GSIB will fail. Because the failure of a GSIB might undermine financial stability and thus cause greater negative externalities than might the failure of a firm that is not a GSIB, a probability of default that would be acceptable for a non-GSIB might be unacceptably high for a GSIB. Lowering the probability of a GSIB's default reduces the risk to financial stability. The most straightforward means of lowering the probability of a GSIB's default is to require it to hold more regulatory capital relative to its risk-weighted assets than non-GSIBs are required to hold.

c. Rationale and Sizing

As discussed in Section III.B.4, the lessons of the 2008 financial crisis have established that the failure of an Enterprise could do significant harm to the national housing finance markets, as well as the U.S. economy more generally. The Enterprises remain the dominant participants in the housing finance system, owning or guaranteeing 44 percent of residential mortgage debt outstanding as of September 30, 2019. The Enterprises also continue to control critical infrastructure for securitizing and administering $5.5 trillion of single-family and multifamily MBS. The Enterprises' imprudent risk-taking and inadequate capitalization led to their near collapse and were among the proximate causes of the 2008 financial crisis. The precipitous financial decline of the Enterprises was also among the most destabilizing events of the 2008 financial crisis, leading to their taxpayer-backed rescue in September 2008. Even today, a perception continues to persist that the Enterprises are ''too big to fail.'' This perception reduces the incentives of creditors and other counterparties to discipline risk-taking by the Enterprises. This perception also produces competitive distortions to the extent that the Enterprises can fund themselves at a lower cost than other market participants.

Pursuant to the Safety and Soundness Act, as amended by HERA, the FHFA Director's principal duties are, among other duties, to ensure that each Enterprise operates in a safe and sound manner and that the operations and activities of each Enterprise foster liquid, efficient, competitive, and resilient national housing finance markets.[59] For the reasons below, FHFA is proposing to incorporate into each Enterprise's PCCBA an Enterprise-specific stability capital buffer that is tailored to the risk that the Enterprise's default or other financial distress could have on the liquidity, efficiency, competitiveness, or resiliency of the national housing finance markets (housing finance market stability risk).[60]

First, an Enterprise-specific stability capital buffer would foster liquid, efficient, competitive, and resilient national housing finance markets by reducing the expected impact of the Enterprise's failure on the national housing finance markets. Under a regulatory capital framework in which each Enterprise is subject to the same capital requirements and has the same probability of default, a larger Enterprise's default would nonetheless still pose a greater expected impact due to the greater magnitude of the effects of its default on the national housing finance markets. As a result, a probability of default that might be acceptable for a smaller Enterprise might be unacceptably high for a larger Enterprise. By subjecting a larger Enterprise to a larger capital surcharge, an Enterprise-specific stability capital buffer would reduce the probability of a larger Enterprise's default, aligning the expected impact of its default with that of a smaller Enterprise.

Second, an Enterprise-specific stability capital buffer also would foster liquid, efficient, competitive, and resilient national housing finance markets by creating incentives for each Enterprise to reduce its housing finance market stability risk by curbing its market share and growth in ordinary times, preserving room for a larger role during a period of financial stress.

Third, an Enterprise-specific stability capital buffer could offset any funding advantage that an Enterprise might have on account of being perceived as ''too big to fail.'' That, in turn, would remove the incentive for counterparties to shift risk to the Enterprise, where that incentive not only increases the housing finance market stability risk posed by the Enterprise but also undermines the competitiveness of the national housing finance markets.

Fourth, a larger capital cushion at an Enterprise could afford the Enterprise and FHFA more time to address emerging weaknesses at the Enterprise that could adversely impact the national housing finance markets. In addition to mitigating national housing finance market risk, the additional time afforded by a larger capital cushion could help FHFA ensure that each Enterprise operates in a safe and sound manner.

Finally, again with respect to safety and soundness, any perception that an Enterprise is ''too big to fail'' leads to moral hazard that undermines market discipline by creditors and other counterparties over the risk taking at an Enterprise. By increasing the regulatory capital at an Enterprise, the stability capital buffer would shift more tail risk back to the Enterprise's shareholders, which should have the added benefit of offsetting any ''too big to fail'' funding advantage arising from unpriced tail risk. The resulting enhanced market discipline should enhance safety and soundness by increasing the likelihood that the Enterprise's risks are appropriately managed.

FHFA is proposing a stability capital buffer based on a market share approach. Alternatively, FHFA is seeking comment on an additional approach that would have the Enterprises compute their stability capital buffer in a manner analogous to the U.S. banking approach for determining the GSIB surcharge.

d. Market Share Approach

Under FHFA's market share approach, an Enterprise's stability capital buffer would depend on an Enterprise's share of total residential mortgage debt outstanding that exceeds a threshold of 5.0 percent market share. The stability capital buffer, expressed as a percent of adjusted total assets, would increase by 5 basis points for each percentage point of market share exceeding that threshold. For purposes of determining the stability capital buffer, the Enterprise's mortgage assets would mean the sum of:

- The unpaid principal balance of its single-family mortgage exposures, including any single-family loans that secure MBS guaranteed by the Enterprise;
- The unpaid principal balance of its multifamily mortgage exposures, including any multifamily loans that secure MBS guaranteed by the Enterprise;
- The carrying value of its Enterprise MBS or Ginnie Mae MBS, PLS, and other securitization exposures (other than its retained CRT exposures); and
- The exposure amount of any other mortgage assets.

Residential mortgage debt outstanding would mean the amount of mortgage debt outstanding secured by single-family or multifamily residences that are located in the United States (excluding any mortgage debt outstanding secured by non-farm, non-residential, or farm properties). FHFA would publish the residential mortgage debt outstanding as of the end of each calendar year, potentially using similar data published by the Federal Reserve Board.

Among other considerations, FHFA developed this market share-based calibration of the stability capital buffer based on a linear interpolation between two points. First, FHFA began with an assumption that an Enterprise that has a share of total residential mortgage debt outstanding equal to 5.0 percent—as of September 30, 2019, roughly $632 billion in single-family and multifamily mortgage exposures owned or

[59] 12 U.S.C. 4513(a)(1).

[60] FHFA's proposed stability capital buffer should not be construed to imply or otherwise suggest that a similar capital surcharge would necessarily be appropriate for the Enterprises' counterparties or other market participants in the housing finance system. Some of these market participants do not pose much, if any, risk to the liquidity, efficiency, competitiveness, or resiliency of national housing finance markets.

guaranteed—would not merit a stability capital buffer to mitigate its national housing finance stability risk. An Enterprise with that 5.0 percent market share would have more assets than U.S. Bancorp ($487.6 billion in total assets, as of September 30, 2019), which is not a GSIB, but less assets than the next largest U.S. banking organization, Morgan Stanley ($902.6 billion in total assets as of September 30, 2019), which is a GSIB.

At the other extreme, the largest GSIB surcharge for a U.S. GSIB is that of JPMorgan Chase, at 3.5 percent of risk-weighted assets as of September 30, 2019. An Enterprise would roughly approximate an equivalent stability capital buffer if it had a 25 percent share of total residential mortgage debt outstanding. At that market share, the Enterprise's stability capital buffer would be 1.00 percent of its adjusted total assets, approximately equivalent to the 3.5 percent surcharge expressed as a percent of risk-weighted assets under the September 30, 2019 average net credit risk weight on the Enterprises' mortgage exposures of 28 percent.

Under this market share approach, as of September 30, 2019, Fannie Mae and Freddie Mac would have had stability capital buffers of, respectively, 1.05 and 0.64 percent of adjusted total assets. Under the September 30, 2019 28 percent average risk weight on their exposures, Fannie Mae and Freddie Mac's stability capital buffers would have been 3.8 and 2.3 percent of risk-weighted assets, respectively, roughly in line with U.S. GSIBs of similar size.

The following Table 7 details the calculation of the proposed stability capital buffer as of December 31, 2007, September 30, 2017, and September 30, 2019.

Table 7: Stability Capital Buffer under the Market Share Approach

	In millions of dollars			Data Source*	
	Dec 31, 2007	**Sep 30, 2017**	**Sep 30, 2019**	MDO	Z.1 - L.217
Data Source*	MDO	MDO	Z.1 - L.217	2007 & 2017	2019
Total Market					
Single-Family	$11,253,203	$10,499,810	$11,080,100	Line 2	Line 2
Multifamily	811,417	1,311,309	1,560,900	Line 3	Line 3
Total	$12,064,620	$11,811,119	$12,641,000		
Fannie Mae					
Regular	$403,577	$3,131,487	$3,280,200	Line 39	Line 34
Pools	2,299,072	11,781	7,700	Line 60	Line 42
Total	$2,702,649	$3,143,268	$3,287,900		
Market Share	22%	27%	26%		
less 5%	-5%	-5%	-5%		
Share subject to buffer	17%	22%	21%		
x 5 bps	87	108	105		
Adjusted Total Assets	$3,048,113	$3,357,483	$3,547,447		
Stability Capital Buffer	$26,521	$36,282	$37,266		
Freddie Mac					
Regular	$79,776	$1,828,870	$1,969,300	Line 45	Line 35
Pools	1,717,342	178,738	268,200	Line 57	Line 41
Total	$1,797,118	$2,007,608	$2,237,500		
Market Share	15%	17%	18%		
less 5%	-5%	-5%	-5%		
Share subject to buffer	10%	12%	13%		
x 5 bps	49	60	64		
Adjusted Total Assets	$2,176,201	$2,262,407	$2,524,593		
Stability Capital Buffer	$10,768	$13,572	$16,032		

Sources:
https://www.federalreserve.gov/data/mortoutstand/default.htm
Mortgage Debt Outstanding Table
The MDO table is no longer being updated. All of the series can be found in the Financial Accounts of the United States at
https://www.federalreserve.gov/releases/z1/release-dates.htm
Financial Accounts of the United States - Z.1, L.217 Total Mortgages

Question 16. Is the market share approach appropriately formulated and calibrated to mitigate the national housing finance market stability risk posed by an Enterprise? If not, what modifications should FHFA consider to ensure an appropriate calibration?

Question 17. Is the market share approach appropriately formulated and calibrated to ensure each Enterprise operates in a safe and sound manner? If not, what modifications should FHFA consider to ensure an appropriate calibration?

e. Alternative Approach

FHFA is soliciting comment on whether to replace or supplement the market share approach discussed in Section VII.A.3.d with another approach that considers other indicators of the housing finance market stability risk posed by an Enterprise. Other such indicators could include the ownership of the Enterprise's MBS and debt by other financial institutions, the degree of control by the Enterprise over key securitization infrastructure, the extent of the Enterprise's role in aggregating and distributing credit risk through CRT, the Enterprise's reliance on short-term debt funding, or the Enterprise's expected debt issuances during a financial stress to fund purchases of mortgage exposures out of securitization pools.

One specific alternative approach under consideration by FHFA is to replace or supplement the market share approach with a modified version of the U.S. banking framework's two methods for determining a GSIB's capital surcharge.[61] Under method 1, a U.S. GSIB determines its capital surcharge using the sum of weighted indicator scores that span five categories correlated with systemic importance—size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. For each indicator, the U.S. GSIB's indicator score is its own measure of the indicator divided by the aggregate global measure of that indicator, which is based on other GSIBs' measures. Method 2 uses similar inputs but replaces the substitutability indicators with metrics for the U.S. GSIB's reliance on short-term wholesale funding. Method 2 is also calibrated in a manner that generally will result in GSIB capital surcharges that are higher than those calculated under method 1.

FHFA is soliciting comment on whether to calibrate the stability capital buffer based on some subset of the U.S. banking framework's five categories—for example, size, interconnectedness, and substitutability—and exclude the indicators for cross-jurisdictional activity or complexity. In particular, cross-jurisdictional activity might not be an important driver of the national housing finance market stability risk posed by an Enterprise.

FHFA is also soliciting comment on whether modifications to the definitions or calculations of the U.S. banking framework's specific GSIB surcharge indicators would be appropriate to ensure the resulting score or scores are correlated with an Enterprise's national housing finance market stability risk. For example, the Enterprises play an integral role in the national housing finance market, and there are few, if any, natural substitutes for that role, but an Enterprise's amount of underwritten transactions in debt and equity markets, one of the substitutability indicators under the U.S. banking framework, might not be strongly correlated with that risk.

Another approach might be to adopt a modified version of the U.S. banking framework's method and then use a similar measure of an Enterprise's reliance on short-term debt funding (perhaps with adjustments for the expected debt issuances during a financial stress to fund purchases of NPLs out of securitization pools) as the basis for a replacement for the U.S. banking framework's method 2.

Question 18. Should the Enterprise-specific stability capital buffer be determined using the U.S. banking framework's approach to calculating capital surcharges for GSIBs?

Question 19. What, if any, modifications to the U.S. banking framework's approach to calculating capital surcharges for GSIBs are appropriate for determining the Enterprise-specific stability capital buffer?

Question 20. Should the Enterprise-specific stability capital buffer be determined based on a sum of the weighted indicators for size, interconnectedness, and substitutability under the U.S. banking framework?

Question 21. Which, if any, indicators of the housing finance market stability risk posed by an Enterprise, other than its market share, should be used to size the Enterprise's stability capital buffer? How should those other indicators be measured and weighted to produce a score of the housing finance market stability risk posed by an Enterprise?

Question 22. What, if any, measure of the Enterprise's short-term debt funding or expected debt issuances during a financial stress to fund purchases of NPLs out of securitization pools should be used to size the Enterprise's stability capital buffer?

B. Leverage Buffer

In addition to the payout restrictions posed by the PCCBA, to avoid limits on capital distributions and discretionary bonus payments, an Enterprise also would be required to maintain tier 1 capital in excess of the amount required under the tier 1 leverage ratio requirement by at least the amount of a PLBA equal to 1.5 percent of the Enterprise's adjusted total assets. The primary purpose of the PLBA would be to serve as a non-risk-based supplementary measure that provides a credible backstop to the combined PCCBA and risk-based capital requirements. From a safety-and-soundness perspective, each of the risk-based and leverage ratio requirements offsets potential weaknesses of the other. Taken together, well-calibrated risk-based capital requirements working with a credible leverage ratio requirement are more effective than either would be in isolation. FHFA deems it important that the buffer-adjusted risk-based and leverage requirements are also closely calibrated to each other so that they have an effective complementary relationship.

To size the PLBA, FHFA looked first to the PCCBA of each Enterprise. At 1.5 percent of adjusted total assets, the PLBA for Fannie Mae and Freddie Mac would be, respectively, $53 billion and $38 billion as of September 30, 2019. For Fannie Mae, the PLBA would be less than its PCCBA, while for Freddie Mac the reverse is true. These results suggest that 1.5 percent PLBA is calibrated to ensure that the PCCBA and PLBA have an effective complementary relationship such that each is independently meaningful.

FHFA also looked to the sizing of similar leverage buffer requirements under the U.S. banking framework. Some large U.S. banking organizations are required to maintain a supplementary leverage ratio requirement of 3.0 percent of their total leverage exposure and, to avoid restrictions on distributions and discretionary bonuses, a leverage buffer requirement of 2.0 percent of their total leverage exposure. That 2.0 percent total leverage buffer requirement is 40 percent of the 5.0 percent buffer-adjusted leverage ratio requirement to avoid payout restrictions. Similarly, a 1.5 percent PLBA for the Enterprises would be 37.5 percent of the 4.0 percent buffer-adjusted leverage ratio requirement to avoid payout restrictions.

Question 23. Is the PLBA appropriately sized to backstop the PCCBA-adjusted risked-based capital requirements?

Question 24. Should the PLBA for an Enterprise be sized as a fraction or other function of the PCCBA of the Enterprise? If so, how should the PLBA of an Enterprise be calibrated based on the Enterprise's PCCBA?

C. Payout Restrictions

An Enterprise would be subject to limits on its capital distributions and discretionary bonus payments if either its capital conservation buffer is less than its PCCBA, as discussed in Section VII.A, or its leverage buffer is less than its PLBA, as discussed in Section VII.B. An Enterprise also may not make distributions or discretionary bonus payments during the current calendar quarter if, as of the end of the previous calendar quarter: (i) The eligible retained income of the Enterprise was negative; and (ii) either (A) the capital conservation buffer of the Enterprise was less than its stress capital buffer, or (B) the leverage buffer of the Enterprise was less than its PLBA.

The capital conservation buffer is composed solely of CET1 capital. An Enterprise's capital conservation buffer is equal to the lowest of the following, calculated as of the last day of the previous calendar quarter:

- The Enterprise's adjusted total capital minus the minimum amount of adjusted total capital required under the proposed rule;
- The Enterprise's tier 1 capital minus the minimum amount of tier 1

[61] 12 CFR part 217, subpart. H (Federal Reserve Board).

capital required under the proposed rule; or

- The Enterprise's CET1 capital minus the minimum amount of CET1 capital required under the proposed rule.

An Enterprise's maximum payout ratio determines the extent to which it is subject to limits on capital distributions and discretionary bonuses. The maximum payout ratio is the percent of eligible retained income that an Enterprise can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The eligible retained income of an Enterprise is the greater of: (i) The Enterprise's net income for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and (ii) the average of the Enterprise's net income, as applicable, for the four calendar quarters preceding the current calendar quarter. The maximum payout ratio is itself a function of the extent to which the applicable capital buffer is less than the applicable prescribed buffer amount, as set forth on Table 8.

Table 8: Calculation of Maximum Payout Ratio

Capital buffer[62]	Maximum payout ratio
Greater than or equal to the Enterprise's prescribed buffer amount.[63]	No payout ratio limitation applies
Less than the Enterprise's prescribed buffer amount, and greater than or equal to 75 percent of the Enterprise's prescribed buffer amount.	60 percent
Less than 75 percent of the Enterprise's prescribed buffer amount, and greater than or equal to 50 percent of the Enterprise's prescribed buffer amount.	40 percent
Less than 50 percent of the Enterprise's prescribed buffer amount, and greater than or equal to 25 percent of the Enterprise's prescribed buffer amount.	20 percent
Less than 25 percent of the Enterprise's prescribed buffer amount.	0 percent

If an Enterprise is subject to a maximum payout ratio, the payout restrictions would apply to all capital distributions, which generally extends to dividends or payments on, or repurchases of, CET1, tier 1, or tier 2 capital instruments (except, with respect to a payment on a tier 2 capital instrument, if the Enterprise does not have full discretion to permanently or temporarily suspend such payments without triggering an event of default). The payout restrictions would also extend to discretionary bonuses, broadly defined to include any payment made to an executive officer of an Enterprise where the Enterprise retains discretion as to whether to make, and the amount of, the payment, the amount paid is determined by the Enterprise without prior promise to, or agreement with, the executive officer, and the executive officer has no contractual right to the payment.

FHFA expects that each Enterprise generally will seek to avoid any payout restriction by maintaining regulatory capital in excess of its buffer-adjusted risk-based and leverage ratio requirements during ordinary times. FHFA also expects that, consistent with its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle, each Enterprise might draw down its buffers during a period of financial stress. However, it would not be consistent with the safe and sound operation of an Enterprise for the Enterprise to maintain regulatory capital less than its buffer-adjusted requirements in the ordinary course except for some reasonable period after a financial stress, pending the Enterprise's efforts to raise and retain regulatory capital.

Nothing in this proposed rule limits the authority of FHFA to take action to address unsafe or unsound practices or violations of law, including actions inconsistent with an Enterprise's charter. FHFA could, depending on the facts and circumstances, determine that it is an unsafe or unsound practice, or that it is inconsistent with the Enterprise's statutory mission, for an Enterprise to maintain regulatory capital that is less than its buffer-adjusted requirements during ordinary times. If FHFA were to make that determination, FHFA would have all of its enforcement and other authorities, including its authority to issue a cease-and-desist order, to require the Enterprise to remediate that unsafe or unsound practice—for example, by developing and implementing a plan to raise additional regulatory capital.

FHFA is soliciting comments on whether some or all of the payout restrictions should be phased-in over a transition period. In anticipation of the potential development and implementation of a capital restoration plan by each Enterprise, tailored exceptions to the payout restrictions might be appropriate to facilitate an Enterprise's issuances of equity to new investors, particularly to the extent that any tailored exception would shorten the time required for an Enterprise to achieve the regulatory capital amounts contemplated by the proposed rule or otherwise enhance its safety and soundness. For example, a tailored exception to allow for some distributions on an Enterprise's newly issued preferred stock might increase investor demand for the offerings of those shares. Similarly, a tailored exception for some limited regular dividends on an Enterprise's common stock might increase investor demand for those shares.

Question 25. Are the payout restrictions appropriately formulated and calibrated?

Question 26. Should there be any sanction or consequence other than payout restrictions triggered by an Enterprise not maintaining a capital conservation buffer or leverage buffer in

[62] An Enterprise's ''capital buffer'' means, as applicable, its capital conservation buffer or its leverage buffer.

[63] An Enterprise's ''prescribed buffer amount'' means, as applicable, its PCCBA or its PLBA.

excess of the applicable PCCBA or PLBA?

Question 27. Should the payout restrictions be phased-in over an appropriate transition period? If so, what is an appropriate transition period?

Question 28. Should the payout restrictions provide exceptions for dividends on newly issued preferred stock, perhaps with any exceptions limited to some transition period following conservatorship?

Question 29. Should the payout restrictions provide an exception for some limited dividends on common stock over some transition period?

VIII. Credit Risk Capital: Standardized Approach

A. Single-Family Mortgage Exposures

The standardized credit risk-weighted assets for each single-family mortgage exposure would be determined using grids and risk multipliers that together would assign an exposure-specific risk weight based on the risk characteristics of the single-family mortgage exposure. The resulting exposure-specific credit risk capital requirements generally would be similar to those of the 2018 proposal, subject to some simplifications and refinements. As discussed in Section VIII.A.3, the base risk weight would be a function of the single-family mortgage exposure's MTMLTV, among other things. The MTMLTV would be subject to a countercyclical adjustment to the extent that national house prices are 5.0 percent greater or less than an inflation-adjusted long-term trend, as discussed in Section VIII.A.4. This base risk weight would then be adjusted based on other risk attributes, including any mortgage insurance or other loan-level credit enhancement and the counterparty strength on that enhancement, as discussed in Sections VIII.A.5 and VIII.A.6. Finally, as discussed in Section VIII.A.7, this adjusted risk weight would be subject to a floor of 15 percent.

1. Single-Family Business Models

The core of an Enterprise's single-family guarantee business is acquiring single-family mortgage loans from mortgage companies, commercial banks, credit unions, and other mortgage lenders, packaging those loans into MBS, and selling the MBS either back to the original lenders or to other private investors in exchange for a fee that represents a guarantee of timely principal and interest payments on those MBS.

The Enterprises engage in the acquisition and securitization of single-family mortgage exposures primarily through two types of transactions: Lender swap transactions; and cash window transactions. In a lender swap transaction, lenders pool eligible single-family loans together and deliver the pool of loans to an Enterprise in exchange for an MBS backed by those single-family mortgage loans, which the lenders generally then sell in order to use the proceeds to fund more mortgage loans. In a cash window transaction, an Enterprise purchases single-family loans from a large, diverse group of lenders and then, at a later date, securitizes the acquired loans into an MBS. For MBS issued as a result of either lender swap transactions or cash window transactions, the Enterprises provide investors with a guarantee of the payment of principal and interest payments in exchange for a guarantee fee. Single-family loans that have been purchased but have not yet been securitized are held in the Enterprises' whole loan portfolios. In addition, the Enterprises also repurchase some delinquent loans from their guaranteed MBS subject to certain requirements and restrictions.

Except to the extent that they transfer the risk to private investors, the Enterprises are exposed to credit risk through their ownership of single-family mortgage exposures and their guarantees of MBS. Consequently, the Enterprises attempt to mitigate the likelihood of incurring credit losses in a variety of ways. One way to reduce potential credit losses is through loan-level credit enhancements such as mortgage insurance. Another way of reducing potential credit losses is through the transfer of risk at the pool level through securitization or synthetic securitization transactions.

2. Calibration Framework

In general, FHFA calibrated the base risk weights and risk multipliers for single-family mortgage exposures to require credit risk capital sufficient to absorb the lifetime unexpected losses incurred on single-family mortgage exposures experiencing a shock to house prices similar to that observed during the 2008 financial crisis. Lifetime unexpected losses are the difference between lifetime credit losses in such conditions (also known as stress losses) and expected losses.

As adverse economic conditions are not explicitly defined, the loss projections that underpin the credit risk capital requirements in the proposed rule are based on several different economic scenarios. Each Enterprise used economic scenarios that it defined to project loan-level credit risk capital. In addition, FHFA used the baseline and severely adverse scenario defined in DFAST to project unexpected losses. FHFA used these pre-existing scenarios as a starting point for its estimations in order to provide economic scenarios consistent with those of the U.S. banking framework for stress tests required under DFAST. FHFA also used these scenarios to ensure a straightforward, transparent approach to the proposed rule's capital requirements. The DFAST scenarios include forecasts for macroeconomic variables, including house prices, interest rates, and unemployment rates.

House prices are used to define the MTMLTV ratio, where the likelihood of a loss occurring upon default increases as the proportion of equity to loan value decreases. Therefore, the projected house price path is the predominant macroeconomic driver of single-family stress scenarios.

The Enterprises used similar house price paths to project stress losses. In the stress scenarios used by FHFA and the Enterprises, nationally averaged house prices declined by 25 percent from peak to trough (the period of time between the shock and the recovery), which is consistent with the decline in house prices observed during the 2008 financial crisis. The 25 percent house price decline is also broadly consistent with assumptions used in the DFAST severely adverse scenario over the past several years, although the 2020 DFAST cycle assumes a 28 percent house price decline in its severely adverse scenario. However, the trough and recovery assumptions used by FHFA and the Enterprises are somewhat more conservative than the observed house price recoveries post crisis.

Using these stress scenarios, the single-family grids were, as a general rule, calibrated based on estimates of unexpected losses from the Enterprises' internal models and FHFA's publicly available model.[64] The Enterprises and FHFA ran synthetic and actual loans with a baseline risk profile through their own credit models using these stress scenarios. Each single-family segment has its own baseline risk profile, which is discussed segment-by-segment in VIII.A.3. Consequently, each cell of each single-family grid represents projected unexpected losses, converted to a risk weight, for a baseline loan with a

[64] FHFA's single-family loss model is available on its website at *fhfa.gov*. For performing loans, all three models were used to construct the single-family grid. For single-family mortgage exposures other than performing loans, FHFA relied primarily on the Enterprises' estimates of unexpected losses.

particular combination of primary risk factors.

The risk multipliers were similarly calibrated based on estimates of unexpected losses from the Enterprises' internal models and FHFA's publicly available model. The Enterprises varied the secondary risk factors, specific to each single-family segment, to estimate each risk factor's multiplicative effects on estimates of unexpected losses for the baseline loan in each single-family segment. FHFA considered the risk multipliers estimated by the Enterprises, which were generally consistent in magnitude and direction, in conjunction with its own estimated values in determining the proposed single-family risk multipliers.

Question 30. Is the methodology used to calibrate the credit risk capital requirements for single-family mortgage exposures appropriate to ensure that the exposure is backed by capital sufficient to absorb the lifetime unexpected losses incurred on single-family mortgage exposures experiencing a shock to house prices similar to that observed during the 2008 financial crisis?

Question 31. What, if any, changes should FHFA consider to the methodology for calibrating credit risk capital requirements for single-family mortgage exposures?

3. Base Risk Weights

The proposed rule would require an Enterprise to determine a base risk weight for each single-family mortgage exposure using one of four grids, one for each single-family segment. These segments are based on payment performance because as a risk factor it is a material determinant of projected unexpected loss. Additional risk factors affect unexpected losses differently depending on where a single-family mortgage exposure is in its life cycle. The base risk weight for a single-family mortgage exposure would therefore change over the life cycle of the single-family mortgage exposure, generally decreasing when the single-family mortgage exposure is seasoned and performing, and increasing when the single-family mortgage exposure is delinquent or recently delinquent.

The four single-family segments would be:

• Non-performing loan (NPL): A single-family mortgage exposure that is 60 days or more past due.

• Modified re-performing loan (modified RPL): A single-family mortgage exposure that is not an NPL and has previously been modified or entered a repayment plan.

• Non-modified re-performing loan (non-modified RPL): A single-family mortgage exposure that is not an NPL, has not been previously modified or entered a repayment plan, and has been an NPL at any time in the last 48 calendar months.

• Performing loan: A single-family mortgage exposure that is not an NPL, a modified RPL, or a non-modified RPL. A non-modified RPL generally transitions to a performing loan after not being an NPL at any time in the prior 48 calendar months.

Each single-family segment would have a unique, two-dimensional risk weight grid (single-family grid) that an Enterprise would use to determine its base risk weight before subsequently applying risk multipliers. The dimensions of the single-family grids would vary by single-family segment to allow the single-family grids to differentially incorporate key risk drivers into the base risk weights on a segment-by-segment basis.

The single-family grids reflect several notable differences from the single-family grids in the 2018 proposal. First, FHFA combined the ''New Originations'' and ''Performing Seasoned'' base grids into one single-family grid for performing loans. Commenters recommended that the single-family segmentation could be simplified in this way without a meaningful loss of accuracy.

Second, for purposes of the definition of NPL, the proposed rule would define delinquency as 60 days or more past due, while the 2018 proposal defined delinquency as 30 days past due. Commenters recommended this change in order to mitigate variations in regulatory capital requirements, and because a significant portion of 30-day past due loans become current in the following month or do not become more delinquent. The practical effect of this change is that the projected unexpected losses on 30-day past due loans has been reallocated from the single-family grid for NPLs to the single-family grid for performing loans, increasing the base credit risk capital requirements for performing loans above where they were in the 2018 proposal. In addition, following the redefinition of delinquency, the proposed rule does not contemplate a return to performing loan status for a non-modified RPL with 36 consecutive timely payments and no more than 1 missed payment in the 12 months preceding that 36-month period.

Third, the single-family grids would reflect credit risk capital that was allocated using the ''number of borrowers'' and ''loan balance'' single-family risk multipliers of the 2018 proposal. As discussed in Section VIII.A.5, these risk multipliers are not included in the proposed rule. In order to ensure the risk-based capital requirements do not decrease by the amount of capital that would have otherwise been required due to these risk factors, FHFA has redistributed the capital requirements across cells of the single-family grids.

Fourth, the MTMLTVs used to assign base risk weights in the proposed single-family grids would be subject to a countercyclical adjustment as described in VIII.A.4.

Performing Loans

The primary risk factors for performing loans are credit score and MTMLTV (after factoring in the loan-level countercyclical adjustment). Credit score correlates strongly with the likelihood of a borrower default, while MTMLTV relates to both the likelihood of default and the severity of a potential loss should a borrower default (loss given default).[65] For the first five scheduled payment dates, an Enterprise would use the credit score at origination to determine the base risk weight. After that time, an Enterprise would use the refreshed or updated credit score. As discussed in Section VIII.A.4, an Enterprise would use the adjusted or unadjusted MTMLTV, depending on whether the loan-level countercyclical adjustment is non-zero (except that for the first five scheduled payment dates after the origination of a single-family mortgage exposure, an Enterprise would use OLTV rather than MTMLTV). The single-family grid for performing loans is presented below in Table 9. For purposes of this table, credit score means the original credit score of the single-family mortgage exposure if the loan age is less than 6, or the refreshed credit score otherwise.

[65] As in the 2018 proposal, FHFA notes that the Enterprises currently rely on Classic FICO for product eligibility, loan pricing, and financial disclosure purposes, and therefore the single-family grid for performing loans was estimated using Classic FICO credit scores. Throughout the proposed rule, the use of term ''credit score'' should be interpreted to mean Classic FICO credit scores. If the Enterprises were to begin using a different credit score for these purposes, or multiple scores, the single-family grids and multipliers might need to be recalibrated. Related to that, in February 2020, the Enterprises published a Joint Credit Score Solicitation that describes the process for credit score model developers to submit applications to the Enterprises. The validation and approval of credit score models will be a multi-year effort by the Enterprises under requirements established by FHFA's final rule on the process for validation and approval of credit score models. 84 FR 41886 (Aug. 16, 2019).

Table 9: Performing Loan Base Risk Weights

	Adjusted MTMLTV											
Credit Score	<= 30%	> 30%, <= 60%	> 60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
< 620	2%	18%	49%	72%	105%	129%	159%	188%	218%	247%	275%	317%
>=620, < 640	2%	14%	39%	58%	84%	102%	127%	151%	178%	208%	237%	282%
>=640, < 660	2%	12%	34%	51%	73%	89%	111%	133%	159%	186%	214%	258%
>=660, < 680	2%	10%	29%	44%	63%	78%	98%	119%	141%	168%	194%	236%
>=680, < 700	2%	9%	26%	38%	55%	67%	88%	109%	125%	150%	176%	215%
>=700, < 720	2%	8%	22%	33%	47%	57%	75%	94%	110%	134%	158%	194%
>=720, < 740	2%	6%	19%	28%	41%	50%	66%	84%	96%	118%	140%	172%
>=740, < 760	2%	5%	16%	23%	33%	40%	54%	69%	80%	99%	119%	147%
>=760, < 780	2%	4%	13%	19%	27%	32%	43%	56%	65%	82%	99%	122%
>= 780	2%	3%	10%	14%	21%	25%	33%	43%	50%	63%	77%	96%

Credit scores have values ranging from 300 to 850, and OLTVs typically range from 10 percent to 97 percent. MTMLTVs typically range from 10 percent to upwards of 120 percent. The Enterprises conduct most of their new single-family businesses within an OLTV range of 70 percent to 95 percent. FHFA included MTMLTV buckets beyond 95 percent to account for adverse changes in home prices subsequent to origination, as well as to account for the inclusion of streamlined refinance loans in the single-family segment.

In the 2018 proposal, the single-family grid for new originations had a distinct treatment for loans with an 80 percent OLTV to account for the high volume and distinct features of these particular loans. FHFA determined that including 80 percent OLTV loans with other single-family mortgage exposures with LTVs between 75 percent and 80 percent did not result in a meaningful loss of accuracy, so the single-family grid for performing loans has combined their treatment. As previously discussed, the base risk weights for performing loans include projected unexpected losses for single-family mortgage exposures that are between 30 and 60 days past due.

The base risk weights for performing loans do not reflect credit enhancements such as mortgage insurance, which would generally lower an Enterprise's risk-based capital requirement for a single-family mortgage exposure with an LTV greater than 80 percent. Risk weight adjustments for credit enhancements are discussed in Section VIII.A.6.

Aside from the primary risk factors represented in the dimensions of the single-family grid for performing loans, there are several secondary risk factors accounted for in the risk profile of the synthetic loan used in the calibration of the base risk weights. Those secondary risk factors, along with the values that determine the baseline risk profile for performing loans, are: Loan age less than 24 months; 30-year fixed-rate; purchase; owner-occupied; single-unit; retail channel sourced; debt-to-income ratio between 25 percent and 40 percent; no second lien; full documentation; non-interest-only; not streamlined refinance loans; and zero cohort burnout (described below).[66]

[66] The CFPB's ability-to-repay rule generally prohibits interest-only and low-documentation loans. However, these risk factors may be present on single-family mortgage exposures originated prior to the 2008 financial crisis.

Unlike the 2018 proposal, neither loan size (greater than $100,000) nor the number of borrowers (multiple) is a secondary risk factor. Variations in the credit risk capital requirements due to these secondary risk factors are captured using risk multipliers, as discussed in Section VIII.A.5.

Non-Modified RPLs

The primary risk factors for non-modified RPLs are MTMLTV (after factoring in the loan-level countercyclical adjustment) and the re-performing duration. The re-performing duration is the number of scheduled payment dates since the non-modified RPL was last an NPL (60 days or more past due), and is a strong predictor of the likelihood of a subsequent default. MTMLTV is a strong predictor of the likelihood of default and loss given default for single-family mortgage exposures in this segment. The proposed single-family grid for non-modified RPLs is presented below in Table 10. For purposes of this table, non-modified re-performing duration means the number of scheduled payment dates since the non-modified RPL was last an NPL.

Table 10: Non-modified RPL Base Risk Weights

	Adjusted MTMLTV											
Non-modified re-performing duration	<= 30%	> 30%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
<= 3	2%	20%	50%	69%	84%	105%	122%	135%	149%	160%	174%	180%
>3, <= 12	2%	14%	39%	54%	67%	84%	100%	113%	127%	141%	160%	177%
> 12, <= 36	2%	11%	32%	46%	57%	69%	84%	97%	111%	127%	150%	175%
> 36, <= 48	2%	7%	21%	32%	46%	56%	72%	88%	103%	123%	143%	174%

Re-performing duration is divided into four categories such that the base risk weights would generally decrease as re-performing duration increases. When the re-performing duration is greater than three years, the base risk weight for the non-modified RPL would begin to approximate the base risk weight for a performing loan. A single-family mortgage exposure that re-performs for greater than four years, and has not been modified, would revert to being classified as a performing loan.

Aside from the primary risk factors represented in the single-family grid for non-modified RPLs, there are many secondary risk factors accounted for in the risk profile of the synthetic loan used in the calibration of the base risk weights. These secondary risk factors, along with the values that determine the baseline risk profile for non-modified RPLs, are the same as those for performing loans with the inclusion of two additional features—refreshed credit scores between 660 and 700, and a maximum previous delinquency of less than 60 days—and the exclusion of loan age and cohort burnout. Variations in the credit risk capital requirements due to these secondary risk factors would be captured using risk multipliers, as discussed in Section VIII.A.5.

Modified RPLs

The primary risk factors for modified RPLs are similar to non-modified RPLs. However, along with MTMLTV (after factoring in the loan-level countercyclical adjustment), the second primary risk factor in the segment would be either the re-performing duration or the performing duration, whichever is less. The re-performing duration is the number of scheduled payment dates since the modified RPL was last an NPL (60 days or more past due), while the performing duration measures the number of scheduled payment dates since the last modification of a modified RPL. The proposed single-family grid for modified RPLs is presented below in Table 11. For purposes of this table, modified re-performing duration means the lesser of: (i) The number of scheduled payment dates since the modified RPL was last modified; and (ii) the number of scheduled payments dates the modified RPL was last an NPL.

Table 11: Modified RPL Base Risk Weights

	Adjusted MTMLTV											
Modified re-performing duration	<= 30%	> 30%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
<= 3	2%	31%	76%	98%	115%	129%	145%	159%	170%	179%	189%	196%
>3, <= 12	2%	25%	62%	81%	95%	109%	124%	139%	152%	164%	178%	195%
> 12, <= 36	2%	19%	50%	66%	79%	92%	107%	123%	136%	152%	169%	194%
> 36	2%	13%	35%	50%	68%	80%	98%	117%	133%	150%	168%	193%

Aside from the primary risk factors represented in the dimensions of the single-family grid for modified RPLs, there are many secondary risk factors accounted for in the risk profile of the synthetic loan used in the calibration of the base risk weights. These secondary risk factors, along with the values that determine the baseline risk profile for modified RPLs, are the same as those for non-modified RPLs with one addition; a payment change from modification greater than or equal to -20 percent and less than 0 percent. Variations in the credit risk capital requirements due to these secondary risk factors would be captured using risk multipliers, as discussed in Section VIII.A.5.

Unlike non-modified RPLs, modified RPLs never revert to being classified as performing loans, even after four or more years of re-performance.

NPLs

The primary risk factors for NPLs are the days past due and MTMLTV (after factoring in the loan-level countercyclical adjustment). Days past due is the number of days a single-family mortgage exposure is past due and is a strong predictor of the likelihood of default for NPLs. MTMLTV is a strong predictor of loss given default for exposures in this segment. The proposed single-family grid for NPLs is presented below in Table 12.

Table 12: NPLs Base Risk Weights

	Adjusted MTMLTV							
Days past due	<= 30%	> 30%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%
60 to 89 days	8%	71%	173%	193%	205%	215%	226%	238%
90 to 209 days	11%	85%	184%	201%	211%	218%	224%	230%
>= 210 days	28%	124%	219%	227%	231%	233%	234%	221%

The base risk weights detailed in the single-family grid for NPLs are noticeably non-monotonic as the number of days past due increases, particularly in the highest (right-most) MTMLTV column. This is because as the number of days past due increases for an NPL with higher LTV, so does the expected loss. Because the credit risk capital requirement has been calibrated as the difference between stress loss and expected loss, when expected loss increases and grows closer to stress loss, the projected unexpected loss (reflected by the base risk weight) decreases. The increase in expected loss should be reflected in commensurately higher ALLL.

Aside from the primary risk factors represented in the single-family grid for NPLs, there are several secondary risk factors accounted for in the risk profile of the synthetic loan used in the calibration of the base risk weights. These secondary risk factors, along with the values that determine the baseline risk profile for NPLs, are: 30-year fixed-rate; owner-occupied; single-unit; retail channel sourced; and a refreshed credit score between 640 (inclusive) and 700. Variations in the credit risk capital requirements due to these secondary risk factors would be captured using risk multipliers, as discussed in Section VIII.A.5.

Question 32. Are the base risk weights for single-family mortgage exposures appropriately formulated and calibrated to require credit risk capital sufficient to ensure each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle?

Question 33. Are there any adjustments, simplifications, or other refinements that FHFA should consider for the base risk weights for single-family mortgage exposures?

Question 34. Should the base risk weight for a single-family mortgage exposure be assigned based on OLTV or MTMLTV of the single-family mortgage exposure, or perhaps on the LTV of the single-family mortgage exposure based on the original purchase price and after adjusting for any paydowns of the original principal balance?

Question 35. Should the base risk weight for a single-family mortgage exposure be assigned based on the original credit score of the borrower or the refreshed credit score of the borrower?

Question 36. What steps, including any process for soliciting public comment on an ongoing basis, should FHFA take to ensure that the single-family grids and the real house price trend are updated from time to time as market conditions evolve?

Question 37. Should a delinquency associated with a COVID–19-related forbearance cause a single-family mortgage exposure to become an NPL?

Question 38. Which, if any, types of forbearances, payment plans, or modifications should be excluded from those that cause a single-family mortgage exposure to become a modified RPL? Should a forbearance, payment plan, or modification arising out of a COVID–19-related forbearance request cause a single-family mortgage exposure to become a modified RPL?

4. Countercyclical Adjustment

The MTMLTVs used to assign base risk weights to single-family mortgage exposures in the single-family grids would be subject to a countercyclical adjustment an Enterprise would be required to make when national house prices increase or decrease by more than 5.0 percent from an estimated inflation-adjusted long-term trend. Many commenters noted the pro-cyclical nature of the aggregate risk-based capital requirements of the 2018 proposal. Certain commenters recommended FHFA replace MTMLTV and refreshed credit scores with OLTV and original credit scores to reduce pro-cyclicality. Other commenters recommended FHFA continue to use MTMLTV and refreshed credit scores in order to provide a more accurate view of risk and achieve rational pricing and proper incentives. Additional commenters recommended FHFA base capital requirements on fundamental house values, while still other commenters suggested FHFA introduce a countercyclical requirement either through a countercyclical capital buffer or a countercyclical risk-based capital requirement.

The proposed formulaic countercyclical adjustment to loan-level single-family MTMLTVs would be based on FHFA's U.S. all-transactions house price index (HPI). The adjustment would restrict decreases in MTMLTV during periods of rising vulnerabilities in house prices and limits increases in MTMLTV when vulnerabilities recede. The adjustment is designed to increase the resilience of the Enterprises when there is an elevated risk of above-normal losses and to reduce the need for additional capital during a period of financial stress.

An Enterprise would calculate the MTMLTV adjustment by first estimating a long-term trend of FHFA's quarterly, not-seasonally-adjusted HPI using a prescribed trough-to-trough methodology, deflated by the Consumer Price Index for All Urban Consumers, All Items Less Shelter in U.S. City Average. If the deflated all-transactions HPI exceeds the estimated long-term trend by more than 5 percentage points, the Enterprise would adjust upward the MTMLTV of every single-family mortgage exposure by the difference between the deflated all-transactions HPI and 5.0 percent. Otherwise, the Enterprise would use the unadjusted MTMLTV. On the other hand, if the deflated all-transactions HPI falls below the estimated long-term trend by more than 5 percentage points, the Enterprise would adjust downward the MTMLTV of every single-family mortgage exposure by the difference between the deflated all-transactions HPI and 5.0 percent. Otherwise, the Enterprise would use the unadjusted MTMLTV.

In other words, if the HPI exceeds its long-term trend by more than 5 percentage points, the Enterprise would adjust upward the MTMLTV by the ratio of the HPI index actual value to the HPI index if it were at 5.0 percent over long-term trend. This adjustment, in effect, would reduce the house price used to calculate MTMLTV to the level expected if all house prices nationally adjusted downward by the percent the index exceeds 5.0 percent above trend.

FHFA chose collars of 5.0 percent above and below the long-term trend in house prices because it would allow for MTMLTVs to reflect the best estimate of market value most of the time, while restricting excessive MTMLTV increases or decreases during periods where house prices appear to deviate more materially from their long-term trend. The figure below presents the historical deflated all-transactions HPI series with both an estimated long-term trend and 5.0 percent collars above and below the trendline. When the HPI series is above or below the collars, the MTMLTV adjustment would be non-zero.

The following Figure 1 and Table 13 provide an illustration of the historical data used to calculate the long-term trend in HPI, along with the plus/minus 5.0 percent collars, as well as examples of how single-family MTMLTVs would be adjusted under the proposed framework.[67]

Figure 1: Real National HPI 1975 Q1 to 2019 Q3, Long-term Trend (1975 – 2012), and Collar

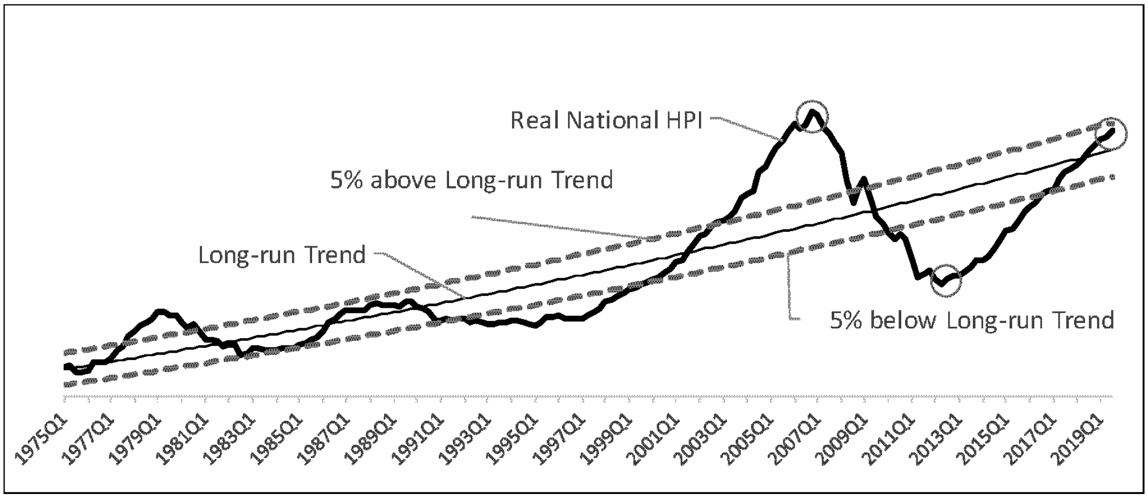

Table 13: Examples of Countercyclical Adjustments to Single-family LTV

	Dec 31, 2006	Jun 30, 2012	Sept 30, 2019
Real National HPI	1.97	1.38	1.91
Long-run trend HPI	1.59	1.69	1.84
Change from the long-run trend to real HPI	24%	-18%	3%
Long-run trend HPI/Real National HPI	80%	123%	97%
Countercyclical Adjustment*	-16%	16%	0%

Adjusted MTMLTV = MTMLTV/(1 + Countercyclical Adjustment)

	Adjusted MTMLTV		
	Dec 31, 2006	Jun 30, 2012	Sept 30, 2019
MTMLTV = 60%	71%	52%	60%
MTMLTV = 80%	95%	69%	80%
MTMLTV = 95%	113%	82%	95%

*If the change from the long-run trend to HPI is:

Greater than 5%, Countercyclical Adjustment = 1.05 x Long-run trend HPI/Real National HPI -1

Less than -5%, Countercyclical Adjustment = 0.95 x Long-run trend HPI/Real National HPI -1

Between 5% and -5%, Countercyclical Adjustment = 0

[67] The parameters of the long-run trend are estimated using linear regression on the natural logarithm of real HPI from the Q3 1975 trough to the Q2 2012 trough. Figure 1 shows the fitted values from the estimated long-run trend from Q1 1975 to Q3 2019. FHFA might need to revisit the calibration of the parameters in the event of future troughs.

Table 13 illustrates three scenarios. Under the first scenario, 2006, Real HPI exceeds the long-term trend by more than 5.0 percent, so single-family house prices would be adjusted downward such that adjusted MTMLTV would be greater than MTMLTV. A single-family mortgage exposure with a 60 percent MTMLTV would be assigned a base risk weight using its adjusted MTMLTV of 71 percent. Similarly, an 80 percent MTMLTV would correspond to a 95 percent adjusted MTMLTV, while a 95 percent MTMLTV would correspond to a 113 percent adjusted MTMLTV. Under the second scenario, 2012, Real HPI is less than the long-term trend by more than 5.0 percent, so single-family house prices would be adjusted upward such that adjusted MTMLTV would be less than MTMLTV. For example, a single-family mortgage exposure with an 80 percent MTMLTV would be assigned a base risk weight using its adjusted MTMLTV of 69 percent. In the final scenario, September 30, 2019, Real HPI exceeds the long-term trend by 3.0 percent. In this case, because 3.0 percent is less than 5.0 percent, single-family house prices would not be adjusted, and adjusted MTMLTV would equal MTMLTV for all values of MTMLTV.

Question 39. Is the MTMLTV adjustment appropriately formulated and calibrated to require credit risk capital sufficient to ensure each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle? If not, what modifications should FHFA consider to ensure an appropriate formulation and calibration?

Question 40. Does the MTMLTV adjustment strike an appropriate balance in mitigating the pro-cyclicality of the aggregate risk-based capital requirements while preserving a mortgage risk-sensitive framework? Are the collars set appropriately at 5.0 percent above or below the long-term index trend?

Question 41. How should the long-term house price trend be determined for the purpose of any countercyclical adjustment to a single-family mortgage exposure's credit risk capital requirement?

5. Risk Multipliers

The proposed rule would require an Enterprise to adjust the base risk weight for a single-family mortgage exposure to account for additional loan characteristics using a set of single-family-specific risk multipliers. The risk multipliers would refine the base risk weights to account for risk factors beyond the primary risk factors reflected in the single-family grids, and for variations in secondary risk factors not captured in the risk profiles of the synthetic loans used to calibrate the single-family grids. The adjusted risk weight for a single-family mortgage exposure would be the product of the base risk weight, the combined risk multiplier, and any credit enhancement multiplier, which is discussed in Section VIII.A.6.

The risk multipliers correspond to common characteristics that increase or decrease the projected unexpected losses of a single-family mortgage exposure. Although the specified risk characteristics are not exhaustive, they capture key real estate loan performance drivers, and are commonly used in mortgage pricing and underwriting.

The risk multipliers are substantially the same as those of the 2018 proposal, with some simplifications and refinements. In particular, FHFA eliminated the single-family risk multipliers for "number of borrowers" and "loan balance," and reallocated the associated unexpected losses across the single-family grids. The practical effect of this change is that the base risk weights in the single-family grids are greater than they otherwise would have been if the two risk multipliers had not been eliminated.

TABLE 14—RISK MULTIPLIERS

Risk factor	Value or range	Single-family segment			
		Performing loan	Non-modified RPL	Modified RPL	NPL
Loan Purpose	Purchase	1	1	1	
	Cashout Refinance	1.4	1.4	1.4	
	Rate/Term Refinance	1.3	1.2	1.3	
Occupancy Type	Owner Occupied or Second Home	1	1	1	1
	Investment	1.2	1.5	1.3	1.2
Property Type	1 Unit	1	1	1	1
	2–4 Unit	1.4	1.4	1.3	1.1
	Condominium	1.1	1	1	1
	Manufactured Home	1.3	1.8	1.6	1.2
Origination Channel	Retail	1	1	1	1
	TPO	1.1	1.1	1.1	1
DTI	DTI ≤25%	0.8	0.9	0.9	
	25% <DTI ≤40%	1	1	1	
	DTI >40%	1.2	1.2	1.1	
Product Type	FRM30	1	1	1	1
	ARM1/1	1.7	1.1	1	1.1
	FRM15	0.3	0.3	0.5	0.5
	FRM20	0.6	0.6	0.5	0.8
Subordination	No subordination	1	1	1	
	30% <OLTV ≤60% and 0% <subordination ≤5%.	1.1	0.8	1	
	30% <OLTV ≤60% and subordination >5%.	1.5	1.1	1.2	
	OLTV >60% and 0% <subordination ≤5%.	1.1	1.2	1.1	
	OLTV >60% and subordination >5%	1.4	1.5	1.3	
Loan Age	Loan age ≤24 months	1			
	24 months <loan age ≤36 months	0.95			
	36 months <loan Age ≤60 months	0.8			
	Loan age >60 months	0.75			

TABLE 14—RISK MULTIPLIERS—Continued

Risk factor	Value or range	Single-family segment			
		Performing loan	Non-modified RPL	Modified RPL	NPL
Cohort Burnout	No Burnout	1			
	Low	1.2			
	Medium	1.3			
	High	1.4			
Interest-only	No IO	1	1	1	
	Yes IO	1.6	1.4	1.1	
Loan Documentation	Full	1	1	1	
	None or low	1.3	1.3	1.2	
Streamlined Refi	No	1	1	1	
	Yes	1	1.2	1.1	
Refreshed Credit Score for Modified RPLs and Non-modified RPLs	Refreshed credit score <620		1.6	1.4	
	620 ≤refreshed credit score <640		1.3	1.2	
	640 ≤refreshed credit score <660		1.2	1.1	
	660 ≤refreshed credit score <700		1	1	
	700 ≤refreshed credit score <720		0.7	0.8	
	720 ≤refreshed credit score <740		0.6	0.7	
	740 ≤refreshed credit score <760		0.5	0.6	
	760 ≤refreshed credit score <780		0.4	0.5	
	Refreshed credit score ≥780		0.3	0.4	
Payment Change from Modification	Payment change ≥0%			1.1	
	−20% ≤payment change <0%			1	
	−30% ≤payment change <−20%			0.9	
	Payment change <−30%			0.8	
Previous Maximum Days Past Due	0–59 days		1	1	
	60–90 days		1.2	1.1	
	91–150 days		1.3	1.1	
	151+ days		1.5	1.1	
Refreshed Credit Score for NPLs	Refreshed credit score < 580				1.2
	580 ≤refreshed credit score <640				1.1
	640 ≤refreshed credit score <700				1
	700 ≤refreshed credit score <720				0.9
	720 ≤refreshed credit score <760				0.8
	760 <refreshed credit score <780				0.7
	Refreshed credit score ≥780				0.5

Table 14 is structured in the following way: the first column represents secondary risk factors, the second column represents the values or ranges each secondary risk factor can take, and the third through sixth columns represent risk multipliers for performing loans, non-modified RPLs, modified RPLs, and NPLs, respectively. Thus, there would be a different set of risk multipliers for each of the four single-family segments.

Each secondary risk factor could take multiple values, and each value or range of values would have a risk multiplier associated with it. For any particular single-family mortgage exposure, each risk multiplier could take a value of 1.0, above 1.0, or below 1.0. A risk multiplier of 1.0 would imply that the risk factor value for a single-family mortgage exposure is similar to, or in a certain range of, the particular risk characteristic found in the single-family segment's synthetic loan. A risk multiplier value above 1.0 would be assigned to a risk factor value that represents a riskier characteristic than the one found in the single-family segment's synthetic loan, while a risk multiplier value below 1.0 would be assigned to a risk factor value that represents a less risky characteristic than the one found in the single-family segment's synthetic loan. Finally, the risk multipliers would be multiplicative, so each single-family mortgage exposure in a single-family segment would receive a risk multiplier for every risk factor pertinent to that segment, even if the risk multiplier is 1.0 (implying no change to the base risk weight for that risk factor). The total combined risk multiplier for a single-family mortgage exposure would be, in general, the product of all individual risk multipliers pertinent to the single-family segment in which the exposure is classified.

There are two general types of single-family risk factors for which risk multipliers are applied: Risk factors determined at origination and risk factors that change as a loan seasons or ages.

Risk factors determined at origination include common characteristics such as loan purpose, occupancy type, and property type. The impacts of this type of risk factor on single-family mortgage performance and credit losses are generally well understood and commonly used in mortgage pricing and underwriting. Many of these risk factors can be quantified and applied in a straightforward manner using the proposed risk multipliers. The full set of single-family risk factors determined at origination for which the proposed rule would require risk multipliers is:

- *Loan purpose.* Loan purpose reflects the purpose of the single-family mortgage exposure at origination. The risk multiplier would be at least 1.0 for any purpose other than "purchase."
- *Occupancy type.* Occupancy type reflects the borrower's intended use of the property, with an owner-occupied property representing a baseline level of risk across all single-family segments (a risk multiplier of 1.0), and an investment property being higher risk (a risk multiplier greater than 1.0).
- *Property type.* Property type describes the physical structure of the property, with a 1-unit property representing a baseline level of risk (a

risk multiplier of 1.0), and other property types such as 2–4 unit properties or manufactured homes being higher risk (a risk multiplier greater than 1.0).

- *Origination channel.* Origination channel is the type of institution that originated the single-family mortgage exposure, and whether or not it originated from a third-party, including a broker or correspondent. Single-family mortgage exposures that did not originate from a third-party represent a baseline level of risk (a risk multiplier of 1.0).
- *Product type.* Product type reflects the contractual terms of the single-family mortgage exposure as of the origination date, with a 30-year fixed-rate mortgage and select adjustable-rate mortgages (including, for example, ARM 5/1 and ARM 7/1) representing a baseline level of risk (a risk multiplier of 1.0). Adjustable-rate loans with an initial one-year fixed-rate period followed by a rate that adjusts annually (ARM 1/1) are considered higher risk (a risk multiplier greater than 1.0), while shorter-term fixed-rate loans are considered lower risk (a risk multiplier less than 1.0).
- *Interest-only.* Interest-only reflects whether or not a loan has an interest-only payment feature during all or part of the loan term. Interest-only loans are generally considered higher risk (a risk multiplier greater than 1.0) than non interest-only loans due to their slower principal accumulation and an increased risk of default driven by the potential increase in principal payments at the expiration of the interest-only period.
- *Loan documentation.* Loan documentation refers to the completeness of the documentation used to underwrite the single-family mortgage exposure, as determined under the Guide of the Enterprise. Loans with low or no documentation have a high degree of uncertainty around a borrower's ability to pay, and are considered higher risk (a risk multiplier greater than 1.0) than loans with full documentation where a lender is able to verify the income, assets, and employment of a borrower.
- *Streamlined refinance.* Streamlined refinance is an indicator for a single-family mortgage exposure that was refinanced through a streamlined refinance program of an Enterprise, including HARP. These loans generally cannot be refinanced under normal circumstances due to high MTMLTV, and therefore would be considered higher risk (a risk multiplier greater than 1.0).

Risk factors that change dynamically and are updated as a single-family mortgage exposure seasons include characteristics such as loan age, current credit score, and delinquency or modification history. These risk factors are correlated with probability of default and/or loss given default, and are therefore important in projecting unexpected losses. The full set of dynamic single-family risk factors for which the proposed rule would require risk multipliers is:

- *DTI.* DTI is the ratio of the borrower's total monthly obligations (including housing expense) divided by the borrower's monthly income, as calculated under the Guide of the Enterprise. DTI affects and reflects a borrower's ability to make payments on a single-family mortgage exposure. A DTI between 25 percent and 40 percent would reflect a baseline level of risk (a risk multiplier of 1.0), and as a borrower's income rises relative to the borrower's debt obligations (a lower DTI), the single-family mortgage exposure would be considered lower risk (a risk multiplier less than 1.0). If a borrower's income falls relative to the borrower's debt obligations (a higher DTI), the single-family mortgage exposure would be considered higher risk (a risk multiplier greater than 1.0).
- *Subordination.* Subordination is the amount equal to the original unpaid principal balance of any second lien single-family mortgage exposure divided by the lesser of the appraised value or sale price of the property that secures the single-family mortgage exposure. Single-family mortgage exposures with no subordination would represent a baseline level of risk (a risk multiplier of 1.0), whereas single-family mortgage exposures with varying combinations of OLTV and subordination percentage would be generally considered higher risk (a risk multiplier greater than 1.0).
- *Loan age.* Loan age is the number of scheduled payment dates since the single-family mortgage exposure was originated. Older single-family mortgage exposures are considered less risky because in general as loans age the likelihood of events occurring that would trigger mortgage default decreases.
- *Cohort burnout.* Cohort burnout reflects the number of refinance opportunities since the single-family mortgage exposure's sixth scheduled payment date. A refinance opportunity is any calendar month in which the Primary Mortgage Market Survey (PMMS) rate for the month and year of the origination of the single-family mortgage exposure exceeds the PMMS rate for that calendar month by more than 50 basis points. Cohort burnout is an indicator that a borrower is less likely to refinance in the future given the opportunity to do so. Borrowers that demonstrate a lower propensity to refinance have higher credit risk, and a single-family mortgage exposure with a cohort burnout greater than zero would receive a risk multiplier greater than 1.0.
- *Refreshed credit score for RPLs and NPLs.* Refreshed credit scores refer to the most recently available credit scores as of the capital calculation date. In general, a credit score reflects the credit worthiness of a borrower, and a higher credit score implies lower risk and a lower risk multiplier. For RPLs, a refreshed credit score between 660 and 700 reflects a baseline level of risk (a risk multiplier of 1.0). For NPLs, a refreshed credit score between 640 and 700 represents a baseline level of risk (a risk multiplier of 1.0).
- *Payment change from modification.* For modified RPLs, the payment change from modification reflects the change in the monthly payment, as a percent of the original monthly payment, resulting from a modification. In general, higher payment reductions tend to reduce the likelihood of future default, so single-family mortgage exposures with higher payment reductions from modifications would have a lower capital requirement (a risk multiplier less than 1.0).
- *Previous maximum days past due.* For RPLs, previous maximum number of days past due reflects the maximum number of days a single-family mortgage exposure has been past due in the last 36 months. Days past due is positively correlated with the likelihood of future default. Therefore, a single-family mortgage exposure with a previous maximum delinquency between 0 and 59 days represent a baseline level of risk (a risk multiplier of 1.0), and a single-family mortgage exposure with a maximum delinquency greater than 59 days month would be considered higher risk (a risk multiplier greater than 1.0).

Not all risk multipliers would apply to every single-family segment, because the risk multipliers were estimated separately for each single-family segment. In cases where a risk factor did not influence the projected unexpected loss of single-family mortgage exposures in a single-family segment, or a risk factor did not apply at all (payment change from modification, in the performing loan segment, for example), there would be no risk multiplier for that risk factor in that single-family segment.

Question 42. Are the risk multipliers for single-family mortgage exposures appropriately formulated and calibrated to require credit risk capital sufficient to ensure each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle?

Question 43. Are there any adjustments, simplifications, or other refinements that FHFA should consider for the risk multipliers for single-family mortgage exposures?

Question 44. Should the combined risk multiplier for a single-family mortgage exposure be subject to a cap (*e.g.,* 3.0, as contemplated by the 2018 proposal)?

6. Credit Enhancement Multipliers

The Enterprises' charter acts generally require single-family mortgage exposures with an unpaid principal balance exceeding 80 percent of the value of the property to have one of three forms of loan-level credit enhancement at the time of acquisition. This requirement can be satisfied through:

• The seller retaining a participation of at least 10 percent in the single-family loan (participation agreement);

• The seller agreeing to repurchase or replace the single-family mortgage exposure, or reimburse losses, in the event of default (a recourse agreement); or

• A guarantee or insurance on the unpaid principal balance which is in excess of 80 percent LTV (mortgage insurance or MI). Mortgage insurance is the most common form of loan-level credit enhancement.

Loan-level credit enhancements sometimes provide credit enhancement beyond that required by the charter acts.

To account for the decrease in an Enterprise's exposure to unexpected loss on a single-family mortgage exposure subject to loan-level credit enhancement, an Enterprise would adjust the base risk weight using an adjusted credit enhancement multiplier. That adjusted credit enhancement multiplier would be based on a credit enhancement multiplier (CE multiplier) for the single-family mortgage exposure and then adjusted for the strength of the counterparty providing the loan-level credit enhancement. A smaller CE multiplier (and therefore a smaller adjusted credit enhancement multiplier) would correspond to a loan-level credit enhancement that transfers more of the projected unexpected loss to the counterparty and thus requires less credit risk capital of the Enterprise for the single-family mortgage exposure. For example, before any adjustment for counterparty strength, a CE multiplier of 0.65 for a single-family mortgage exposure subject to loan-level credit enhancement means that an Enterprise is exposed to 65 percent of the projected unexpected loss of the single-family mortgage exposure and that the counterparty providing the loan-level credit enhancement is projected to absorb, assuming it is an effective counterparty, the remaining 35 percent of the projected unexpected loss.

Participation agreements are rarely utilized by the Enterprises, and for reasons of simplicity, the proposed rule would not assign any benefit for these agreements (*i.e.,* a CE multiplier of 1.0).

Recourse agreements may be unlimited or limited. Full recourse agreements provide full coverage for the life of the loan, while partial recourse agreements provide partial coverage or have a limited duration. Because a counterparty would be responsible for all credit risk pursuant to a full recourse agreement, the single-family mortgage exposure would be assigned a CE multiplier of zero, subject to a counterparty haircut. For partial recourse agreements, the proposed rule would require an Enterprise to take into account the percent coverage, adjusted for the term of coverage, to determine the appropriate benefit.

The CE multiplier for a single-family mortgage exposure subject to mortgage insurance would vary based on the mortgage insurance coverage and loan characteristics, including (i) whether the mortgage insurance is cancellable or non-cancellable, (ii) whether the mortgage insurance coverage is charter-level or guide-level, and (iii) the loan characteristics, including OLTV, loan age, amortization term, and single-family segment.

• *Cancellation option.* Non-cancellable mortgage insurance (non-cancellable MI) provides coverage for the life of the single-family mortgage exposure. Cancellable mortgage insurance (cancellable MI) allows for the cancellation of coverage upon a borrower's request when the unpaid principal balance falls to 80 percent or less of the original property value, or automatic cancellation when either the loan balance falls below 78 percent of the original property value or the loan reaches the midpoint of the loan's amortization schedule, if the loan is current. Due to the longer period of coverage, non-cancellable MI provides more credit risk protection than cancellable MI. CE multipliers for non-cancellable MI therefore would be lower than CE multipliers for cancellable MI.

• *Coverage.* Charter-level coverage provides mortgage insurance that satisfies the minimum requirements of the Enterprises' charter acts. Guide-level coverage provides deeper coverage, roughly double the coverage provided by charter-level coverage. Therefore, the CE multipliers for guide-level coverage would be lower than the CE multipliers for charter-level coverage.

• *Original LTV.* Single-family mortgage exposures with higher OLTV generally have greater coverage levels than loans with lower OLTV. Higher coverage levels imply greater credit risk protection. Therefore, single-family mortgage exposures with higher OLTVs would have lower CE multipliers.

• *Amortization term.* For cancellable MI, single-family mortgage exposures with a 15- to 20-year amortization period might have cancellation triggered earlier than loans with a 30-year amortization period. Therefore, single-family mortgage exposures with longer amortization terms have a longer period of credit risk protection from mortgage insurance. Single-family mortgage exposures with a 30-year amortization period therefore have a lower CE multiplier than single-family mortgage exposures with a 15- to 20-year amortization period with cancellable mortgage insurance.

• *Single-family segment.* Mortgage insurance coverage on delinquent loans cannot be cancelled. Cancellation of mortgage insurance coverage on modified RPLs is based on the modified LTV and the modified amortization term, which are typically higher than the OLTV and the original amortization term. In both of these cases, the mortgage insurance coverage is extended for a longer period, resulting in greater credit risk protection, relative to mortgage insurance coverage on performing loans. Therefore, in the proposed rule, delinquent and modified loans would have a lower CE multiplier than performing loans.

• *Loan age.* Mortgage insurance cancellation is often triggered sooner for older loans than for younger loans. Therefore, older loans with cancellable MI generally have a shorter period of remaining mortgage insurance coverage and thus have less credit risk protection from mortgage insurance. Older single-family mortgage exposures with cancellable MI therefore have higher CE multipliers than younger single-family mortgage exposures.

The following Tables 15 through 19 present the CE multipliers for single-family mortgage exposures subject to mortgage insurance.

Table 15 contains CE multipliers for all single-family mortgage exposures subject to non-cancellable MI, except NPLs. The table differentiates CE multipliers by type of coverage (charter-level and guide-level), OLTV, amortization term, and coverage percent.

Table 15: CE Multipliers for Single-family Mortgage Exposures Subject to Non-Cancellable MI (Except NPLs)

Amortization Term/ Coverage Type	OLTV	Coverage Percent	CE Multiplier
15/20 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	6%	0.846
	>85%, <=90%	12%	0.701
	>90%, <=95%	25%	0.408
	>95%, <=97%	35%	0.226
	>97%	35%	0.184
30 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	12%	0.706
	>85%, <=90%	25%	0.407
	>90%, <=95%	30%	0.312
	>95%, <=97%	35%	0.23
	>97%	35%	0.188
15/20 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.846
	>85%, <=90%	12%	0.701
	>90%, <=95%	16%	0.612
	>95%, <=97%	18%	0.57
	>97%	20%	0.535
30 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.85
	>85%, <=90%	12%	0.713
	>90%, <=95%	16%	0.627
	>95%, <=97%	18%	0.59
	>97%	20%	0.558

The proposed rule would have three sets of multipliers for cancellable MI. Table 16 contains CE multipliers for performing loans and non-modified RPLs subject to cancellable MI. The table differentiates CE multipliers by type of coverage (charter-level and guide-level), OLTV, coverage percent, amortization term, and loan age.

Table 16: CE Multipliers for Performing Loans and Non-Modified RPLs Subject to Cancellable MI

			Loan Age											
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
Loan with	>90%, <=95%	30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
Guide-level	>95%, <=97%	35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
Coverage	>97%	35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
Charter-level	>95%, <=97%	18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
Coverage	>97%	20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

Table 17 contains CE multipliers for the modified RPLs with 30-year post-modification amortization and subject to cancellable MI. The table differentiates risk multipliers by type of coverage (charter-level and guide-level), OLTV, coverage percent, amortization term, and loan age.

Table 17: CE Multipliers for Modified RPLs with 30-Year Post-Modification Amortization Subject to Cancellable MI

			Months Since Last Modification											
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	12%	0.867	0.906	0.978	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	25%	0.551	0.568	0.653	0.839	0.968	0.992	0.998	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	30%	0.412	0.426	0.470	0.601	0.794	0.889	0.951	0.981	0.992	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.322	0.337	0.380	0.492	0.689	0.810	0.899	0.945	0.965	1.000	1.000	1.000
Coverage	>97%	35%	0.272	0.284	0.334	0.436	0.561	0.682	0.791	0.857	0.887	1.000	1.000	1.000
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	6%	0.934	0.954	0.989	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.780	0.788	0.832	0.922	0.985	0.996	0.999	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.679	0.685	0.711	0.784	0.889	0.940	0.973	0.989	0.995	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.642	0.647	0.669	0.732	0.836	0.900	0.947	0.971	0.981	1.000	1.000	1.000
Coverage	>97%	20%	0.597	0.602	0.623	0.672	0.740	0.805	0.864	0.898	0.914	1.000	1.000	1.000

Table 18 contains CE multipliers for modified RPLs with 40-year post-modification amortization and subject to cancellable MI. Here, CE multipliers are differentiated by type of coverage (charter-level and guide-level), OLTV, coverage percent, and loan age.

Table 18: CE Multipliers for Modified RPLs with 40-Year Post-Modification Amortization Subject to Cancellable MI

			Months Since Last Modification											
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year	>80%, <=85%	6%	0.997	0.998	0.999	0.999	0.999	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	25%	0.826	0.853	0.853	0.853	0.883	0.912	0.943	0.973	0.996	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.732	0.765	0.765	0.765	0.807	0.848	0.892	0.936	0.986	0.998	1.000	1.000
Coverage	>97%	35%	0.630	0.673	0.673	0.673	0.718	0.762	0.814	0.865	0.945	0.980	0.996	1.000
30 Year	>80%, <=85%	12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
Loan with	>90%, <=95%	30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
Guide-level	>95%, <=97%	35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
Coverage	>97%	35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year	>80%, <=85%	6%	0.997	0.998	0.998	0.999	0.998	0.998	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.887	0.904	0.904	0.904	0.924	0.943	0.963	0.983	0.997	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.854	0.874	0.874	0.874	0.896	0.918	0.942	0.966	0.992	0.999	1.000	1.000
Coverage	>97%	20%	0.788	0.810	0.810	0.810	0.835	0.859	0.891	0.922	0.969	0.989	0.998	1.000
30 Year	>80%, <=85%	6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
Charter-level	>95%, <=97%	18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
Coverage	>97%	20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

Table 19, contains proposed CE multipliers for NPLs. Mortgage insurance on delinquent loans cannot be cancelled; therefore, there is no differentiation between cancellable MI and non-cancellable MI for the NPL segment. The table differentiates CE multipliers by type of coverage (charter-level and guide-level), OLTV, amortization term, and coverage percent.

Table 19: CE Multipliers for NPLs Subject to Cancellable MI or Non-Cancellable MI

Original Amortization Term/Coverage Type	OLTV	Coverage Percent	CE Multiplier
15/20 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	6%	0.893
	>85%, <=90%	12%	0.803
	>90%, <=95%	25%	0.597
	>95%, <=97%	35%	0.478
	>97%	35%	0.461
30 Year Amortizing Loan with Guide-level Coverage	>80%, <=85%	12%	0.813
	>85%, <=90%	25%	0.618
	>90%, <=95%	30%	0.530
	>95%, <=97%	35%	0.490
	>97%	35%	0.505
15/20 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.893
	>85%, <=90%	12%	0.803
	>90%, <=95%	16%	0.775
	>95%, <=97%	18%	0.678
	>97%	20%	0.663
30 Year Amortizing Loan with Charter-level Coverage	>80%, <=85%	6%	0.902
	>85%, <=90%	12%	0.835
	>90%, <=95%	16%	0.787
	>95%, <=97%	18%	0.765
	>97%	20%	0.760

Counterparty Credit Risk Adjustments

Sharing losses with counterparties through loan-level credit enhancement exposes an Enterprise to counterparty credit risk. To account for this exposure, the proposed rule would reduce the recognized benefits from loan-level credit enhancement to incorporate the risk that a counterparty is unable to perform its claim obligations. To accomplish this, the proposed rule would implement a counterparty haircut risk multiplier (CP haircut multiplier) to be applied to the CE multiplier. The CP haircut multiplier would take values from zero to one. A value of zero, the smallest haircut, would mean a counterparty is expected to fully perform its claim obligations, while a value of one, the largest haircut, would mean a counterparty is not expected to perform its claim obligations. A value between zero and one would mean a counterparty is expected to perform a portion of its claim obligations.

The CP haircut multiplier would depend on a number of factors that reflect counterparty risk. The three main factors are the creditworthiness of the counterparty, the counterparty's level of concentration in mortgage credit risk, and the counterparty's status as an approved insurer under an Enterprise's counterparty standards for private mortgage insurers.

The proposed rule would require an Enterprise to assign counterparty financial strength ratings using a provided rating framework. In assigning a rating, an Enterprise would assign the counterparty financial strength rating that most closely aligns to the assessment of the counterparty from the Enterprise's internal counterparty risk framework. Descriptions of the 8 different counterparty financial strength ratings are presented below in Table 20.

Table 20: Counterparty Financial Strength Ratings

Counterparty Rating	Description
1	The Enterprise has determined that the counterparty is expected to perform all of its contractual obligations under foreseeable adverse events.
2	The Enterprise has determined that there is negligible risk the counterparty may not be able to perform all of its contractual obligations under foreseeable adverse events.
3	The Enterprise has determined that there is a slight risk the counterparty might not be able to perform all of its contractual obligations under foreseeable adverse events.
4	The Enterprise has determined that foreseeable adverse events will have a greater impact on '4' rated counterparties than higher rated counterparties.
5	The Enterprise has determined that the counterparty might not perform all of its contractual obligations under foreseeable adverse events.
6	The Enterprise has determined that the counterparty is not expected to meet its contractual obligations under foreseeable adverse events.
7	The Enterprise has determined that the counterparty's ability to perform its contractual obligations is questionable.
8	The Enterprise has determined that the counterparty is in default on a material contractual obligation or is under a resolution proceeding or similar regulatory proceeding.

Similarly, the proposed rule would require an Enterprise to utilize its counterparty risk management framework to assign each counterparty a rating of ''not high'' or ''high'' to reflect the counterparty's concentration in mortgage credit risk. During the 2008 financial crisis, three out of the seven mortgage insurance companies were placed in run-off by their state regulators, and payments on the Enterprises' claims were deferred by the state regulators. This exposed the Enterprises to counterparty risk and potential financial losses. More generally, the 2008 financial crisis highlighted that counterparty risk can be amplified when the counterparty's credit exposure is highly correlated with an Enterprise's credit exposure.

Counterparties whose primary lines of business are more concentrated in mortgage credit risk have a higher probability to default on payment obligations when the mortgage default rate is high. The proposed rule would assign larger haircuts to counterparties with higher levels of mortgage credit risk concentration relative to diversified counterparties. An Enterprise would assess the level of mortgage credit risk concentration for each individual counterparty to determine whether the insurer is well diversified or whether it has a high concentration risk.

Finally, an Enterprise would determine whether a mortgage insurance counterparty is in compliance with its own private mortgage eligibility standards. If the counterparty satisfies the set of requirements to be approved to insure loans acquired by an Enterprise, the insurer would be assigned a smaller counterparty haircut.

To calculate the CP haircut, the proposed rule would use a modified version of the Basel framework's IRB approach. The modified version leverages the IRB approach to account for the creditworthiness of the counterparty, but makes changes to reflect the level of mortgage credit risk concentration and the counterparty's status as an approved insurer. The Basel IRB framework provides the ability to differentiate haircuts between counterparties with different levels of risk. The proposed rule would augment the IRB approach to capture risk across counterparties. In this way, the proposed adjustment would help capture wrong-way risk between the Enterprises and their counterparties.

In particular, the proposed approach would calculate the counterparty haircut by multiplying stress loss given default by the probability of default and a maturity adjustment for the asset. The following Figure 2 details the counterparty haircut calculation, as well as the parameterization of the proposed approach:

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Figure 2: Parameterization of the Single-family Counterparty Haircut Risk Multipliers

$$CP\ Haircut = LGD_{stress} * PD_{stress} * MA$$

where LGD_{stress} denotes stress loss given default, PD_{stress} is stress default probability, and MA is maturity adjustment. MA is calculated as follows:

$$MA = \left(\frac{1+(M-2.5)*b}{1-1.5*b}\right),$$

where
$$b = [0.11852 - 0.05478 * \ln(PD)]^2.$$

PD_{stress} is a function of expected probability of default PD, asset value correlation ρ, and an asset value correlation multiplier ($AVCM$). PD_{stress} is calculated as follows:

$$PD_{stress} = \left[N\left(\left(\frac{1}{\sqrt{1-AVCM*\rho}}\right) * G(PD) + \left(\sqrt{\frac{AVCM*\rho}{1-AVCM*\rho}}\right) * G(SCI)\right)\right],$$

$$\rho = \left[0.12 * \left(\frac{1-\exp(-50*PD)}{1-\exp(-50)}\right) + 0.24 * \left(1 - \frac{1-\exp(-50*PD)}{1-\exp(-50)}\right)\right]$$

where SCI is supervisory confidence interval, N(.) is the standard normal distribution, and G(.) is the inverse standard normal distribution.

Parameters	Proposed Values
LGD_{Stress}	45%
SCI	99.9%
Correlation function (ρ)	Basel (PD)
AVCM for High Mortgage Concentration Risk and non-Compliant Insurer	175%
AVCM for High Mortgage Concentration Risk and Compliant Insurer	150%
AVCM for Not High Mortgage Concentration Risk	125%
Maturity 30yr (M)	5
Maturity 15/20yr (M)	3.5
NPL Maturity (M)	1.5

As shown, stress loss given default (LGD) is calibrated to 45 percent according to the historic average stress severity rates. The maturity adjustment is calibrated to 5 years for 30-year products and to 3.5 years for 15- to 20-year single-family mortgage exposures to approximately reflect the average life of the assets. The expected probability of default (PD) is calculated using a historical 1-year PD matrix for all financial institutions.

As discussed above, counterparties with a lower concentration of mortgage credit risk and therefore a lower potential for wrong-way risk would be afforded a lower haircut relative to the counterparties with higher concentrations of mortgage credit risk. Similarly, approved insurers would be afforded a lower haircut relative to counterparties that do not satisfy an Enterprise's eligibility requirements. These differences would be captured through the asset valuation correlation risk multiplier, AVCM. An AVCM of 1.75 would be assigned those counterparties which are not an approved insurer and have high exposure to mortgage credit risk, an AVCM of 1.50 would be assigned those counterparties which are an approved insurer and have high exposure to mortgage credit risk, and an AVCM of 1.25 would be assigned to diversified counterparties which do not have a high exposure to mortgage credit risk. The parameters of the Basel IRB formula, including the AVCM, were augmented to best fit the internal counterparty credit risk haircuts developed by the Enterprises.

The proposed counterparty haircut would also differ by product type and segment. Performing loans, modified RPLs, and non-modified RPLs would be treated differently than NPLs, and within 30-year performing loans, modified RPLs, and non-modified RPLs would receive a larger haircut than 15- or 20-year single-family mortgage exposures.

The NPL segment represents a different level of counterparty risk relative to the performing and re-performing segments. Unlike performing loans, modified RPLs, and non-modified RPLs, an Enterprise would expect to submit claims for NPLs in the near future. The proposed rule would reduce the Basel framework's effective maturity from 5 (or 3.5 for 15/20Yr) to 1.5 for all loans in the NPL segment. The reduced effective maturity would lower counterparty haircuts on loans in the NPL segment.

The proposed rule would utilize the following CP haircut multipliers in Table 21.

Table 21: Single-Family CP Haircut Multipliers

	Mortgage Concentration Risk: Not High			High Mortgage Concentration Risk and Approved Insurer			High Mortgage Concentration Risk and Not an Approved Insurer		
Counterparty Rating	Performing Loans and RPLs		NPLs	Performing Loans and RPLs		NPLs	Performing Loans and RPLs		NPLs
	30 Year Product	20/15 Year Product		30 Year Product	20/15 Year Product		30 Year Product	20/15 Year Product	
1	1.8%	1.3%	0.6%	2.3%	1.6%	0.7%	2.8%	2.0%	0.9%
2	4.5%	3.5%	2.0%	5.9%	4.5%	2.6%	7.3%	5.6%	3.2%
3	5.2%	4.0%	2.4%	6.7%	5.1%	3.1%	8.3%	6.4%	3.9%
4	11.4%	9.5%	6.9%	14.2%	11.8%	8.5%	17.2%	14.3%	10.4%
5	14.8%	12.7%	9.9%	17.8%	15.2%	11.9%	20.9%	18.0%	14.0%
6	21.2%	19.1%	16.4%	24.0%	21.7%	18.6%	26.8%	24.2%	20.8%
7	40.0%	38.2%	35.7%	42.0%	40.1%	37.5%	43.7%	41.7%	39.0%
8	47.6%	46.6%	45.3%	47.6%	46.6%	45.3%	47.6%	46.6%	45.3%

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Finally, FHFA notes that the proposed rule's approach generally assigns more credit risk mitigation benefit to mortgage insurance and other loan-level credit enhancement than would be assigned under the U.S. banking framework, in particular with respect to those counterparties eligible to provide guarantees or insurance. FHFA is soliciting comment on the appropriateness of the differences between the proposed rule and the regulatory capital treatment of loan-level credit enhancement (including with respect to the U.S. banking regulators' stress test assumptions).

Question 45. Are the CE multipliers and CP haircut multipliers for single-family mortgage exposures appropriately formulated and calibrated to require credit risk capital sufficient to ensure each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle?

Question 46. Are there any adjustments, simplifications, or other refinements that FHFA should consider for the CE multipliers and the CP haircut multipliers for single-family mortgage exposures?

Question 47. Are the differences between the proposed rule and the U.S. banking framework with respect to the credit risk mitigation benefit assigned to loan-level credit enhancement appropriate? Which, if any, specific aspects should be aligned?

7. Minimum Adjusted Risk Weight

The proposed rule would establish a floor on the adjusted risk weight for a single-family mortgage exposure equal to 15 percent. FHFA has determined that a minimum risk weight is necessary to ensure the safety and soundness of each Enterprise and that each Enterprise is positioned to fulfill its statutory mission across the economic cycle, including during a period of financial stress.

First, absent this 15 percent risk weight floor, the proposed rule's credit risk capital requirements as of the end of 2007 would not have been sufficient to absorb each Enterprise's crisis-era cumulative capital losses on its single-family book. Absent the 15 percent risk weight floor, Freddie Mac's estimated single-family credit risk capital requirement of $61 billion as of December 31, 2007 under the proposed rule would have been less than its crisis-era single-family cumulative capital losses. With the addition of the 15 percent risk weight floor, Freddie Mac's estimated single-family credit risk capital requirement would have exceeded its crisis-era single-family cumulative capital losses. Absent the 15 percent risk weight floor, Fannie Mae's estimated single-family credit risk capital requirement would have exceeded its crisis-era single-family cumulative capital losses, but by a relatively small amount. The addition of the 15 percent risk weight floor would have added approximately $8 billion to Fannie Mae's single-family credit risk capital requirement, clearing cumulative capital losses by a more comfortable margin.

Second, as discussed in Section IV.B, a risk weight floor is appropriate to mitigate certain risks and limitations associated with the underlying historical data and models used to calibrate the credit risk capital requirements. These risks and limitations are perhaps inherent to any methodology for calibrating granular credit risk capital requirements. In particular:

- A disproportionate share of the Enterprises' crisis-era credit losses arose from certain single-family mortgage exposures that are no longer eligible for acquisition by the Enterprises. The calibration of the credit risk capital requirements attributed a significant portion of the Enterprises' crisis-era losses to these products. The statistical methods used to allocate losses between borrower-related risk attributes and product-related risk attributes pose significant model risk. The sizing of the regulatory capital requirements also must guard against potential future relaxation of underwriting standards and regulatory oversight over those underwriting standards.

- The Enterprises' crisis-era losses likely were mitigated to at least some extent by the unprecedented support by the federal government of the housing market and the economy and also by the declining interest rate environment of the period. There is therefore some risk that the risk-based capital requirements are not specifically calibrated to ensure each Enterprise would be regarded as a viable going concern following a future severe economic downturn that potentially entails more unexpected losses, whether because there is less or no Federal support of the economy, because there is less or no reduction in interest rates, or because of other causes.
- There are some potentially material risks to the Enterprises that are not assigned a risk-based capital requirement—for example, risks relating to uninsured or underinsured losses from flooding, earthquakes, or other natural disasters or radiological or biological hazards. There also is no risk-based capital requirement for the risks that climate change could pose to property values in some localities.

Third, comparison to the Basel and U.S. banking framework's credit risk capital requirements for similar exposures reinforces FHFA's view that a risk weight floor is appropriate to mitigate certain risks and limitations associated with the underlying historical data and models used to calibrate the credit risk capital requirements.[68] Absent this risk weight floor, as of September 30, 2019, the average pre-CRT net credit risk capital requirement on the Enterprises' single-family mortgage exposures (which reflects the benefit of private mortgage insurance but no adjustments for CRT) would have been 1.7 percent of unpaid principal balance, implying an average risk weight of 21 percent. With the 15 percent risk weight floor, the average requirement would have increased by approximately 0.5 percent of unpaid principal balance to an average risk weight of 26 percent. The U.S. banking framework generally assigns a 50 percent risk weight to these exposures to determine the credit risk capital requirement (equivalent to a 4.0 percent adjusted total capital requirement), while the current Basel framework generally assigns a 35 percent risk weight (equivalent to a 2.8 percent adjusted total capital requirement). Before the risk weight floor, before adjusting for CRT, and before adjusting for the capital buffers under the proposed rule and the Basel and U.S. banking frameworks, the Enterprises' credit risk capital requirements for single-family mortgage exposures would have been roughly 40 percent that of U.S. banking organizations and roughly 60 percent that of non-U.S. banking organizations.

The BCBS has finalized a more risk-sensitive set of risk weights for residential mortgage exposures, which are to be implemented by January 1, 2022. With those changes, the lowest standardized risk weight would be 20 percent for single-family residential mortgage loans with OLTVs less than 50 percent. The 21 percent average risk weight would have been about the same as this 20 percent minimum, notwithstanding the Enterprises having an average single-family OLTV of approximately 75 percent as of September 30, 2019.

These comparisons are complicated by the fact that the 21 percent and 26 percent average risk weights reflect loan-level credit enhancement and adjustments for MTMLTV. In particular, some meaningful portion of the gap currently between the credit risk capital requirements of the Enterprises and banking organizations under the proposed rule is due to the proposed rule's use of MTMLTV instead of OLTV, as under the U.S. banking framework, to assign credit risk capital requirements for mortgage exposures. On the one hand, the comparison illustrates how low risk-based capital requirements can become in a mark-to-market framework without prudential floors. On the other hand, in a different house price environment, perhaps after several years of declining house prices, the mark-to-market framework could have resulted in higher credit risk capital requirements than the Basel and U.S. banking frameworks.[69] Some of this gap might be expected to narrow were real property prices to move toward their long-term trend.

However, the current sizing of that gap between the credit risk capital requirements of banking organizations and the Enterprises under the proposed rule is an important consideration informing the enhancements to the 2018 proposal.

Reinforcing that point, the 21 percent average risk weight would have been about the same as the Basel framework's 20 percent risk weight assigned to exposures to sovereigns and central banks with ratings A+ to A− and claims on banks and corporates with ratings AAA to AA−.[70] The 21 percent average risk weight also would have been about the same as the 20 percent risk weight assigned under the U.S. banking framework to Enterprise-guaranteed MBS.

In light of these considerations, FHFA has determined that a minimum risk weight is necessary to ensure the safety and soundness of each Enterprise and that each Enterprise is positioned to fulfill its statutory mission during a period of financial stress. FHFA sized the 15 percent risk weight floor taking into consideration the 20 percent minimum risk weight contemplated by the amendments to the Basel framework for similar exposures, while also seeking to preserve the mortgage risk-sensitive framework by avoiding a risk weight floor that was, in effect, the binding constraint for a substantial portion of single-family mortgage exposures. FHFA is soliciting comment on the sizing of the risk weight floor, including whether to perhaps align the floor with the more risk-sensitive standardized risk weights assigned to similar exposures under the Basel framework.

Question 48. Is the minimum floor on the adjusted risk weight for a single-family mortgage exposure appropriately calibrated to mitigate model and related risks associated with the calibration of the underlying base risk weights and risk multipliers and to otherwise ensure each Enterprise operates in a safe and sound manner and is positioned to

[68] As discussed in Section IV.B.2, while the interest rate and funding risk profiles of the Enterprises and large banking organizations are different, that difference should not preclude comparisons of the credit risk capital requirements of the U.S. banking framework to the credit risk capital requirements of the Enterprises.

[69] In consideration that the U.S. banking and Basel frameworks utilize OLTVs, a comparison of the credit risk capital requirements for newly acquired single-family mortgage exposures under the 2018 proposal and the proposed rule provides the most direct comparison of credit risk capital requirements for new originations. Under the proposed rule, gross credit risk capital (prior to adjustments for credit enhancements and CRT) on newly originated (*i.e.,* loan age less than six months) single-family mortgage exposures as of September 30, 2019, with an average OLTV of 77 percent, would have been 3.8 percent of unpaid principal balance, implying an average risk weight of 47 percent. This compares to the 50 percent risk weight under the U.S. banking framework and 30 percent under the newest BCBS framework for loans with OLTV of 60 to 80 percent. After consideration of charter-required credit enhancements, the average net credit risk capital requirement on the Enterprises' newly originated single-family mortgage exposures as of September 30, 2019 would have been 2.8 percent of unpaid principal balance, implying an average risk weight of 36 percent. These risk weights would then decline to the extent house prices appreciate or increase to the extent house prices depreciate.

[70] *See* BCBS, *The Basel Framework,* paragraphs 20.4 and 20.14 at 181 and 185 (Dec. 15, 2019), available at *https://www.bis.org/basel_framework/index.htm?export=pdf.*

fulfill its statutory mission across the economic cycle?

Question 49. Should the minimum floor on the adjusted risk weight for a single-family mortgage exposure be decreased or increased, perhaps to align the minimum floor with the more risk-sensitive standardized risk weights assigned to similar exposures under the Basel framework (*e.g.,* 20 percent for a single-family residential mortgage loan with LTV at origination less than 50 percent)?

Question 50. Should the floor or other limit used to determine a single-family mortgage exposure's credit risk capital requirement be assessed against the base risk weight, the risk weight adjusted for the combined risk multipliers, or some other input used to determine that credit risk capital requirement?

B. Multifamily Mortgage Exposures

The standardized credit risk-weighted assets for each multifamily mortgage exposure would be determined using grids and risk multipliers that together would assign an exposure-specific risk weight based on the risk characteristics of the multifamily mortgage exposure. The resulting exposure-specific credit risk capital requirements generally would be similar to those in the 2018 proposal, subject to some simplifications and refinements. As discussed in Section VIII.B.3, the base risk weight generally would be a function of the multifamily mortgage exposure's MTMLTV, among other things. This base risk weight would then be adjusted based on other risk attributes, as discussed in Section VIII.B.5. Finally, as discussed in Section VIII.B.6, this adjusted risk weight would be subject to a minimum floor of 15 percent.

1. Multifamily Business Models

The proposed rule would apply to both Enterprises. However, when appropriate, the proposed rule would account for differences in the Enterprises' multifamily business models. These differences are evident, for example, when considering certain elements of the proposed rule related to credit risk transfer.

Multifamily mortgage exposures finance the acquisition and operation of commercial property collateral, typically apartment buildings. This section discusses multifamily mortgage exposures that take the form of whole loans and guarantees. Multifamily whole loans are those that an Enterprise keeps in its portfolio after acquisition. Multifamily guarantees are guarantees provided by an Enterprise of the payment of principal and interest payments to investors in MBS that have been issued by an Enterprise or another security issuer and are backed by previously acquired multifamily whole loans. Except to the extent an Enterprise transfers credit risk to third-party private investors, the credit risk from multifamily mortgage exposures is retained.

Fannie Mae's multifamily business historically has generally relied on the Delegated Underwriting and Servicing (DUS) program. The DUS program is a loss-sharing program that seeks to facilitate the implementation of common underwriting and servicing guidelines across a defined group of multifamily lenders. The number of multifamily lenders in the DUS program has historically ranged between 25 and 30 since the program's inception in the late 1980s. Fannie Mae typically transfers about one-third of the credit risk to those lenders, while retaining the remaining two-thirds of the credit risk and the counterparty risk associated with the DUS lender business relationship. The proportion of risk transferred to the lender may be more or less than one-third under a modified version of the typical DUS loss-sharing agreement. Fannie Mae has also reduced its exposure to the credit risk retained on DUS loans through programmatic ''back-end'' risk transfer activities, including reinsurance transactions (MCIRT) on multifamily mortgages with unpaid principal balances (UPBs) generally smaller than $30 million and note offerings (MCAS) on multifamily mortgages with UPBs generally greater than or equal to $30 million.

In contrast, Freddie Mac's multifamily model has focused on structured, multi-class securitizations. While Freddie Mac has a number of securitization programs for multifamily loans, the largest is the K-Deal program. Under the K-Deal program, which started in 2009, Freddie Mac sells a portion of unguaranteed bonds (mezzanine and subordinate), generally 10 to 15 percent, to private market participants. These sales typically result in a transfer of a high percentage of the credit risk. Freddie Mac generally assumes credit and market risk during the period between loan acquisition and securitization. After securitization, Freddie Mac generally retains a portion of the credit risk through ownership or guarantee of senior K-Deal tranches.

As of 2019, the differences between the two business models have become somewhat less pronounced. The proposed rule is tailored to each Enterprise's current lending practices, and would not preclude either from evolving its business model in the future.

Commenters on the 2018 proposal supported the inclusion of multifamily-specific credit risk capital requirements in order to capture the unique nature of each Enterprise's multifamily business and its particular risk drivers. In addition, commenters generally supported the structure and methodology of those proposed requirements. However, commenters also provided FHFA with critical feedback. Foremost among commenters' concerns was a perceived imbalance of the 2018 proposal as related to the Enterprises' different multifamily business models.

Commenters on the 2018 proposal stressed the importance of having a multifamily market with multiple viable and competing execution methods. To this end, some commenters raised concerns that the multifamily capital requirements in the 2018 proposal would disadvantage the loss sharing business model relative to the securitization business model, potentially to the point where the loss sharing model would no longer be viable. Commenters suggested that the 2018 proposal did not sufficiently account for certain benefits or risk mitigants of the loss sharing business model, particularly relative to the historical loss experience of Fannie Mae's DUS loans. Commenters also suggested that the 2018 proposal's different market risk treatment of multifamily mortgage exposures compared to Enterprise- or Ginnie Mae-backed MBS provided a further disadvantage to using a loss sharing model relative to a securitization model.

FHFA has considered the commenters' feedback and believes that the framework for calculating multifamily credit risk capital requirements under the 2018 proposal was generally appropriately tailored to accommodate both Enterprises' historical business practices.

However, FHFA has addressed the commenters' concerns in two ways. First, FHFA has revised the capital treatment for contractual claims to at-risk servicing rights and clarified the capital treatment for restricted liquidity in Fannie Mae's loss sharing model. The 2018 proposal would have afforded capital relief in multifamily loss sharing transactions by including restricted liquidity as collateral, and by reducing uncollateralized exposure to a counterparty by 50 percent if the Enterprise had a contractual claim to at-risk servicing rights. The proposed rule would retain this treatment of restricted liquidity, but would implement an updated treatment of servicing rights such that in the counterparty haircut calculation, an Enterprise may reduce uncollateralized exposure by 1 year of estimated servicing revenue if the Enterprise has a contractual claim to the at-risk servicing rights.

Second, the proposed rule would introduce a prudential floor of 10 percent for the risk weight assigned to each tranche in a CRT. Such a floor would mitigate potential risks associated with CRT, including the structuring, recourse, and other risks associated with these securitizations.

2. Calibration Framework

As with single-family mortgage exposures, FHFA generally calibrated the base risk weights and risk multipliers for multifamily mortgage exposures to require credit risk capital sufficient to absorb the lifetime unexpected losses incurred on multifamily mortgage exposures experiencing a shock to property values similar to that observed during the 2008 financial crisis. The multifamily-specific stress scenarios used to generate the base risk weights and risk multipliers involve two parameters: (i) Net operating income (NOI), where NOI represents gross potential income (gross rents) net of vacancy and operating expenses, and (ii) property values.

Adverse economic conditions are generally accompanied by either a decrease in expected property revenue or an increase in perceived risk in the multifamily asset class, or both. A decrease in expected occupancy would lead to a decline in income generated by the property, or a lower NOI, while an increase in perceived risk would lead to an increase in the capitalization rate used to discount the NOI when assessing property value. A capitalization rate is defined as NOI divided by property value, so if NOI is held constant, an increase in the capitalization rate is directly related to a decrease in property values. For the purpose of the proposed rule, the multifamily-specific stress scenario assumes an NOI decline of 15 percent and a property value decline of 35 percent. This stress scenario is consistent with market conditions observed during the recent financial crisis, views from third-party market participants and data vendors, and assumptions behind the DFAST severely adverse scenario. Using this stress scenario, the multifamily grids and multipliers were calibrated based on estimates of unexpected losses from the Enterprises' internal models.

Question 51. Is the methodology used to calibrate the credit risk capital requirements for multifamily mortgage exposures appropriate to ensure that the exposure is backed by capital sufficient to absorb the lifetime unexpected losses incurred on multifamily mortgage exposures experiencing a shock to house prices similar to that observed during the 2008 financial crisis?

Question 52. What, if any, changes should FHFA consider to the methodology for calibrating credit risk capital requirements for multifamily mortgage exposures?

3. Base Risk Weights

The proposed rule would require an Enterprise to determine a base risk weight for each multifamily mortgage exposure using a set of two multifamily grids—one for multifamily mortgage exposures with fixed rates (multifamily FRMs), and one for multifamily mortgage exposures with adjustable rates (multifamily ARMs). A multifamily mortgage exposure that has both a fixed-rate period and an adjustable-rate period (hybrid loans) would be deemed a multifamily FRM during the fixed-rate period and a multifamily ARM during the adjustable-rate period.

The multifamily grids reflect two important multifamily mortgage exposure characteristics: Debt-service-coverage-ratio (DSCR) and MTMLTV. These two risk factors are key drivers of the future performance of multifamily mortgage exposures. DSCR is the ratio of property NOI to the loan payment. A DSCR greater than 1.0 indicates that the property generates funds sufficient to cover the loan obligation, while the opposite is true for a DSCR less than 1.0.

The multifamily grids are quantitatively identical to the multifamily grids in the 2018 proposal, except the credit risk capital requirements are presented as base risk weights relative to the 8.0 percent adjusted total capital requirement rather than as a percent of UPB. The multifamily FRM grid was populated using projected unexpected losses for a multifamily FRM with varying DSCR and MTMLTV combinations and the following risk characteristics: $10 million loan amount, 10-year balloon with a 30-year amortization period, non-interest-only, not a special product, and never been delinquent or modified. Similarly, the multifamily ARM grid was populated using projected unexpected losses for a multifamily ARM with varying DSCR and MTMLTV combinations and the following risk characteristics: 3.0 percent origination interest rate, $10 million loan amount, 10-year balloon with a 30-year amortization period, non-interest-only, not a special product, and never been delinquent or modified. Thus, each cell of the multifamily grid represents the average estimated difference, in basis points, between stress losses and expected losses for these synthetic loans with a DSCR and LTV in the tabulated ranges, converted to a risk weight.

For the first five scheduled payment dates after a multifamily mortgage exposure is acquired, an Enterprise would use the multifamily mortgage exposure's LTV at acquisition or origination to determine the base risk weight. After that point, an Enterprise would use the multifamily mortgage exposure's MTMLTV, which would be calculated by adjusting the acquisition LTV using a multifamily property value index or property value estimate based on net operating income and capitalization rate indices. Unlike single-family mortgage exposures, an Enterprise would not make a countercyclicality adjustment to a multifamily mortgage exposure's MTMLTV. For the purposes of the multifamily grids, LTV means either MTMLTV or LTV at acquisition or origination, and DSCR means either MTMDSCR or DSCR at acquisition, depending on the age of the multifamily mortgage exposure.

The multifamily grids for the multifamily FRM and multifamily ARM segments are presented in the following Table 22 and Table 23, respectively.

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Table 22: Multifamily FRM Base Risk Weights

		LTV									
		<=35%	> 35%, <=45%	> 45%, <=55%	> 55%, <=65%	> 65%, <=70%	> 70%, <=75%	> 75%, <=80%	> 80%, <=90%	> 90%, <=100%	>100%
DSCR	<1.00	52%	60%	76%	109%	125%	140%	153%	166%	172%	182%
	>= 1.00, <1.15	45%	52%	65%	92%	105%	118%	129%	140%	145%	153%
	>=1.15, < 1.20	40%	46%	58%	81%	93%	103%	112%	122%	127%	134%
	>=1.20, < 1.25	37%	42%	52%	72%	83%	92%	97%	107%	112%	119%
	>=1.25, < 1.30	33%	38%	47%	65%	74%	81%	86%	94%	99%	105%
	>=1.30, < 1.35	31%	35%	43%	59%	66%	71%	76%	84%	88%	93%
	>=1.35, < 1.50	29%	32%	39%	54%	59%	64%	69%	76%	80%	86%
	>=1.50, < 1.65	25%	27%	31%	39%	43%	47%	51%	57%	62%	70%
	>=1.65, < 1.80	22%	23%	26%	31%	34%	37%	41%	47%	53%	61%
	>=1.80, < 1.95	16%	17%	19%	24%	26%	29%	32%	41%	47%	56%
	>=1.95, < 2.10	15%	15%	16%	20%	23%	26%	28%	37%	44%	54%
	>=2.10, < 2.25	13%	14%	15%	19%	21%	24%	25%	36%	42%	53%
	>=2.25	13%	13%	14%	18%	20%	23%	24%	35%	42%	52%

Table 23: Multifamily ARM Base Risk Weights

		LTV									
		<=35%	> 35%, <=45%	> 45%, <=55%	> 55%, <=65%	> 65%, <=70%	> 70%, <=75%	> 75%, <=80%	> 80%, <=90%	> 90%, <=100%	>100%
DSCR	<1.00	81%	86%	93%	133%	153%	172%	189%	211%	229%	255%
	>=1.00, <1.25	71%	75%	80%	113%	129%	145%	158%	178%	193%	215%
	>=1.25, < 1.30	63%	67%	71%	100%	114%	127%	138%	156%	169%	188%
	>=1.30, < 1.36	57%	60%	63%	88%	101%	113%	120%	136%	149%	168%
	>=1.36, < 1.42	51%	54%	57%	79%	90%	99%	106%	120%	131%	148%
	>=1.42, < 1.47	45%	49%	51%	71%	80%	86%	93%	107%	116%	131%
	>=1.47, < 1.53	37%	42%	47%	64%	71%	77%	84%	97%	106%	120%
	>=1.53, < 1.70	30%	33%	37%	47%	51%	56%	63%	72%	83%	98%
	>=1.70, < 1.87	23%	26%	30%	36%	40%	45%	51%	60%	70%	86%
	>=1.87, < 2.03	19%	21%	22%	28%	31%	35%	40%	52%	62%	79%
	>=2.03, < 2.21	17%	18%	19%	24%	26%	31%	34%	47%	58%	75%
	>=2.21, < 2.38	16%	17%	17%	22%	24%	28%	31%	45%	56%	73%
	>=2.38	16%	16%	16%	21%	23%	27%	30%	44%	55%	72%

In both the multifamily FRM and multifamily ARM grids, the base risk weight would increase as DSCR decreases (moving toward the top of a grid) and as MTMLTV increases (moving toward the right of the grid). Thus, an Enterprise would generally be required to hold more credit risk capital for a higher-risk multifamily mortgage exposure with a low DSCR and a high MTMLTV (the upper-right corner of each grid) than for a lower-risk multifamily mortgage exposure with a high DSCR and a low MTMLTV (the lower-left corner of each grid). The DSCR and MTMLTV breakpoints and ranges represented along the dimensions of the multifamily grids combine to form granular buckets without sacrificing simplicity or mortgage risk sensitivity.

An Enterprise also would use the multifamily grids to calculate the base risk weight for interest-only loans. Interest-only loans allow for payment of interest without any principal amortization during all or part of the loan term, potentially creating increased amortization risk and additional leveraging incentives for the borrower. To partially capture these increased risks, the proposed rule would require an Enterprise to use an interest-only loan's fully amortized payment to calculate DSCR during the interest-only period in order to calculate the multifamily mortgage exposure's base risk weight. That is, an Enterprise would assign each multifamily interest-only mortgage exposure into a multifamily segment, either multifamily FRM or multifamily ARM, and calculate the base risk capital requirement using the corresponding segment-specific multifamily grid, where the DSCR is based on the interest-only loan's fully amortized payment.

FHFA received a number of comments on the multifamily grids in the 2018 proposal. Some commenters stated that the multifamily credit risk capital requirements in the 2018 proposal were too high given the Enterprises' historical multifamily losses. Similarly, some commenters suggested that the credit risk capital required under the 2018 proposal's multifamily grids might be appropriate if FHFA included revenue as a source of loss-absorbing capital, or if FHFA benchmarked its credit risk capital requirements to those published by the National Association of Insurance Commissioners (NAIC), which include revenue offsets.

After consideration of the commenters' suggestions, FHFA believes the calibration of the multifamily grids is appropriate. The base risk weights in the multifamily grids represent estimates of lifetime losses (net of expected losses), so one should expect the base risk weights in the multifamily grids to be larger than observed losses experienced during the recent financial crisis. As discussed in Section V.B.1, consistent with the 2018 proposal, neither the statutory definitions nor the supplemental definitions of regulatory capital include a measure of future guarantee fees or other future revenues.

One commenter recommended FHFA add granularity to the multifamily grids, particularly in the high MTMLTV ranges. FHFA notes that the multifamily grids were constructed using synthetic loans at acquisition, so data in the high MTMLTV range is limited due to the Enterprises' acquisition history. Adding granularity to the outer ranges of the multifamily grids would necessitate further assumptions and extrapolations.

Question 53. Are the base risk weights for multifamily mortgage exposures appropriately formulated and calibrated to require credit risk capital sufficient to ensure each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle?

Question 54. Are there any adjustments, simplifications, or other refinements that FHFA should consider for the base risk weights for multifamily mortgage exposures?

Question 55. Should the base risk weight for a multifamily mortgage exposure be assigned based on OLTV or MTMLTV of the multifamily mortgage exposure, or perhaps on the LTV of the multifamily mortgage exposure based on the original purchase price and after adjusting for any paydowns of the original principal balance?

Question 56. What steps, including any process for soliciting public comment on an ongoing basis, should FHFA take to ensure that the multifamily grids are updated from time to time as market conditions evolve?

4. Countercyclical Adjustment

In contrast to the single-family framework, the proposed multifamily credit risk capital framework does not include an adjustment to mitigate the pro-cyclicality of the aggregate risk-based capital requirements, although FHFA believes such an adjustment could be merited. The proposed single-family countercyclical adjustment is based on an estimated long-term trend in FHFA's inflation-adjusted all-transactions HPI. FHFA does not currently produce a comparable multifamily series, and it is unclear whether there is sufficient data from which to develop a reliable long-term trend in multifamily property values. FHFA is aware of the pro-cyclicality that would be introduced by its multifamily credit risk capital framework, and FHFA could see considerable merit to a countercyclical or similar adjustment. FHFA is soliciting comments on options and available data for a countercyclical adjustment to the credit risk capital requirements for multifamily mortgage exposures.

Question 57. What approach, if any, should FHFA consider to mitigate the pro-cyclicality of the credit risk capital requirements for multifamily mortgage exposures?

5. Risk Multipliers

As with single-family mortgage exposures, the proposed rule would require an Enterprise to adjust the base risk weight for each multifamily mortgage exposure to account for additional loan characteristics using a set of multifamily-specific risk multipliers. The risk multipliers would refine the base risk weights to account for risk factors beyond the primary risk factors reflected in the multifamily grids, and for variations in secondary risk factors not captured in the risk profiles of the synthetic loans used to calibrate the multifamily grids. The adjusted risk weight for a multifamily mortgage exposure would be the product of the base risk weight and the combined risk multiplier.

The risk multipliers represent common loan characteristics that increase or decrease the projected unexpected losses of a multifamily mortgage exposure. Although the specified risk characteristics are not exhaustive, they capture key commercial real estate loan performance drivers, and are commonly used in commercial real estate loan underwriting and rating.

The risk multipliers are substantially the same as those of the 2018 proposal, with some simplifications and refinements. In particular, FHFA enhanced the risk multiplier for loan size to simultaneously make it more granular and less prone to large jumps in credit risk capital from moving from one bracket to the next. FHFA also removed the risk multiplier for multifamily loans with a government subsidy. The multifamily risk multipliers are presented below in Table 24.

Table 24: Multifamily Risk Multipliers

Risk Factor	Value or Range	Risk Multiplier
Payment Performance	Performing	1.00
	Delinquent more than 60 days	1.10
	Re-performing (without modification)	1.10
	Modified	1.20
Interest-only	No	1.00
	Yes (during the interest-only period)	1.10
Loan Term	Loan term <= 1Yr	0.70
	1Yr < loan term <= 2Yr	0.75
	2Yr < loan term <= 3Yr	0.80
	3Yr < loan term <= 4Yr	0.85
	4Yr < loan term <= 5Yr	0.90
	5Yr < loan term <= 7Yr	0.95
	7Yr < loan term <= 10Yr	1.00
	Loan term > 10Yr	1.15
Original Amortization Term	Original amortization term <= 20Yr	0.70
	20Yr < original amortization term <= 25Yr	0.80
	25Yr < original amortization term <= 30Yr	1.00
	Original amortization term > 30Yr	1.10
Original Loan Size (in millions)	Loan size <= $2m	1.45
	$2m < loan size <= $3m	1.35
	$3m < loan size <= $4m	1.25
	$4m < loan size <= $5m	1.15
	$5m < loan size <= $6m	1.08
	$6m < loan size <= $7m	1.02
	$7m < loan size <= $8m	0.96
	$8m < loan size <= $9m	0.92
	$9m < loan size <= $10m	0.88
	$10m < loan size <= $11m	0.86
	$11m < loan size <= $12m	0.84
	$12m < loan size <= $13m	0.82
	$13m < loan size <= $14m	0.81
	$14m < loan size <= $15m	0.81
	$15m < loan size <= $16m	0.80
	$16m < loan size <= $17m	0.80
	$17m < loan size <= $18m	0.80
	$18m < loan size <= $19m	0.80
	$19m < loan size <= $20m	0.80
	$20m < loan size <= $21m	0.80
	$21m < loan size <= $22m	0.80
	$22m < loan size <= $23m	0.79
	$23m < loan size <= $24m	0.78
	$24m < loan size <= $25m	0.76
	Loan size >$25m	0.70
Special Products	Not a special product	1.00
	Student housing	1.15
	Rehab/value-add/lease-up	1.25

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As with the single-family risk multipliers, each risk factor could take multiple values, and each value or range of values would have a risk multiplier associated with it. For any particular multifamily mortgage exposure, each risk multiplier could take a value of 1.0, above 1.0, or below 1.0. A risk multiplier of 1.0 would imply that the risk factor value for a multifamily mortgage exposure is similar to, or in a certain range of, the particular risk characteristic found in the multifamily segment's synthetic loan. A risk multiplier value above 1.0 would be assigned to a risk factor value that represents a riskier characteristic than the one found in the multifamily segment's synthetic loan, while a risk multiplier value below 1.0 would be assigned to a risk factor value that represents a less risky characteristic than the one found in the multifamily segment's synthetic loan. Finally, the risk multipliers would be multiplicative, so each multifamily mortgage exposure in a multifamily segment would receive a risk multiplier for every risk factor pertinent to that multifamily segment, even if the risk multiplier is 1.0 (implying no change to the base risk weight for that risk factor). The total combined risk multiplier for a multifamily mortgage exposure would be, in general, the product of all individual risk multipliers pertinent to the multifamily segment in which the exposure is classified. The proposed multifamily risk multipliers are:

- *Payment performance.* The payment performance risk multiplier would capture risks associated with historical payment performance. Multifamily mortgage exposures would be assigned one of four values: Performing, delinquent, re-performing (without modification), and modified. A performing loan would be one that has never been delinquent in its payments; a delinquent loan would be one that is 60 days or more past due; a re-performing loan would be one that is current in its payments, but has been delinquent in its payments at least once since origination and has cured without modification; and a modified loan would be one that is current in its payments, but has been modified at least once since origination or has gone through a workout plan. An Enterprise would be required to hold more credit risk capital for multifamily mortgage exposures that have a delinquency and/or modification history than for those that do not. Specifically, performing multifamily mortgage exposures would receive a risk multiplier of 1.0, while delinquent, re-performing, and modified exposures would receive a risk multiplier greater than 1.0.
- *Interest-only.* The interest-only risk multiplier would capture risks associated with interest-only exposures during the interest-only period. Interest-only loans are generally riskier than non-interest-only loans, all else equal, and the proposed rule would partially account for this increased amortization and leveraging risk by requiring an Enterprise to use its fully amortized payments to calculate DSCR. Using amortized payment would lower the DSCR, resulting in a higher credit risk capital requirement all else equal. In addition, the proposed rule would further account for interest-only risk with a risk multiplier. Specifically, non-interest-only exposures would receive a risk multiplier of 1.0, while interest-only exposures would receive a risk multiplier of 1.1 during the interest-only period.
- *Loan term.* The loan term risk multiplier would capture risks associated with the remaining term of a multifamily mortgage exposure. The majority of the Enterprises' multifamily mortgage exposures have a loan term of five years or longer, and in general, multifamily mortgage exposures with a shorter term are less risky than those with a longer term. Multifamily mortgage exposures with shorter loan terms carry relatively less uncertainty about eventual changes in property performance and future refinancing opportunities, while multifamily mortgage exposures with longer loan terms carry relatively higher uncertainty about the borrower's ability to refinance in the future. In the proposed rule, a 10-year loan term would be considered a baseline risk, so exposures with a remaining loan term between 7 years and 10 years would receive a risk multiplier of 1.0. The 7- to-10-year range represents a conservative range FHFA believes is appropriate. Multifamily mortgage exposures with remaining loan terms shorter than 7 years would receive risk multipliers less than 1.0, and multifamily mortgage exposures with remaining loan terms longer than 10 years would receive a risk multiplier greater than 1.0. At origination, the remaining loan term would equal the original loan term.
- *Original amortization term.* The amortization term risk multiplier would capture risks associated with the amortization term of a multifamily mortgage exposure. In general, a multifamily mortgage exposure with a shorter repayment period faces less risk of a borrower defaulting on its payments than does a multifamily mortgage exposure with a longer repayment period. The most common amortization term for multifamily mortgage exposures is 30 years, even though most have an original loan term with a balloon payment due earlier, often in 10 years. While amortization terms can potentially take any value, FHFA believes that given the high number of multifamily mortgage exposures with an amortization term between 25 and 30 years, the values represented in the risk multiplier table would sufficiently account for the differences in risk associated with amortization term. In the proposed rule, a 30-year amortization term would represent a baseline level of risk, and a multifamily mortgage exposure with a 30-year amortization term would receive a risk multiplier of 1.0. A multifamily mortgage exposure with an amortization term less than 25 years would receive a risk multiplier less than 1.0, while a multifamily mortgage exposure with an amortization term greater than 30 years would receive a risk multiplier of 1.1.
- *Original loan size.* Multifamily mortgage exposures with larger original loan balances are generally considered less risky than those with smaller balances, because larger balances are commonly associated with larger investors with more access to capital and experience. In addition, the collateral securing a large loan is often a larger, more established, and/or newer property. Alternatively, multifamily mortgage exposures with smaller original balances are often associated with investors with limited funding and smaller, less competitive properties. An original loan size of $10 million would represent a baseline level of risk, and multifamily mortgage exposures meeting that criterion would receive a risk multiplier of 1.0. In a change from the 2018 proposal, and in response to commenters that recommended FHFA add granularity to the loan size risk multiplier in part to avoid large jumps in the credit risk capital requirement when moving from one risk multiplier bucket to the next, multifamily mortgage exposures above or below $10 million would receive a loan size risk multiplier that changes in $1 million increments between $3 million and $25 million. The loan size risk multipliers in the proposed rule were calculated by extrapolating between the loan size risk multiplier breakpoints in the 2018 proposal. Multifamily mortgage exposures with an original loan balance greater than $10 million would receive a risk multiplier less than 1.0, and multifamily mortgage exposures with an original loan balance less than $10 million would receive a risk multiplier greater than 1.0.
- *Special products.* The multifamily special products that would receive a multifamily risk multiplier were selected for their importance based on FHFA staff analysis and expertise, pursuant to discussions with the Enterprises and their collective multifamily business experiences, and in recognition of commenter feedback on the 2018 proposal. The special

products, discussed individually below, are student housing and rehab/value-add/lease-up loans.

Student housing loans provide financing for the operation of apartment buildings for college students. The rental periods for units in these properties often correspond to the institution's academic calendar, so the properties have a high annual turnover of occupants. Student renters, by and large, might not be as careful with the use and maintenance of the rental units as more mature households. As a result, apartment buildings focusing on student housing customarily have more volatile occupancy and less predictable maintenance expenses. In the proposed rule, this would imply higher risk, which leads to a risk multiplier greater than 1.0 for student housing exposures.

The second type of special product includes loans issued to finance rehab/value-add/lease-up projects. Rehab and value-add projects refer to types of renovations, where a rehab project is a like-for-like renovation and a value-add project is one that increases a property's value by adding a new feature to an existing property or converts one component of a property into a more marketable feature, such as converting unused storage units into a fitness center. A lease-up property is one that is recently constructed and still in the process of securing tenants for occupancy. Recently built properties, and those subject to improvements, typically require more intense marketing efforts in the early stages of property operation. It often takes longer for these properties to reach and stabilize at reasonable occupancy levels. These factors elevate the property's risk, which in the proposed rule would lead to a risk multiplier greater than 1.0 for exposures backing these properties.

Although not requiring a risk multiplier, a special type of multifamily mortgage exposure contemplated by the proposed rule is a supplemental loan. Supplemental loans refer to multifamily loans issued to a borrower for a property against which the borrower has previously received a loan. There can be more than one supplemental loan for any borrower/property combination. These loans, by definition, increase loan balances, which lead to higher LTVs and could lead to lower DSCRs, which could lead to higher risk. Therefore, the proposed rule would require an Enterprise to account for this potentially higher risk by recalculating DSCRs and LTVs for the original and supplemental loans using combined loan balances and income/payment information. The Enterprise would calculate risk weights for the original and supplemental loans using the aggregate LTV and DSCR and the separate loan characteristics of each loan, with the exception of the loan size risk multiplier which would be determined using the aggregate UPB of the original loan and all supplemental loans.

In a change from the 2018 proposal, the proposed rule would not include a risk multiplier for multifamily mortgage exposures with a government subsidy. FHFA sought feedback on the government subsidy risk multiplier in the 2018 proposal, and commenters recommended FHFA consider implementing the risk multiplier based on the level of subsidy. FHFA analyzed the available performance data for government-subsidized multifamily mortgage exposures, due to the relatively low instances of loss across multifamily loan programs that include a government subsidy, FHFA determined it was not feasible to accurately calibrate thresholds at which the level of government subsidy impacted the probability of loss occurring or the severity of that loss. As a result of that analysis, FHFA has determined to take the approach of eliminating the government subsidy risk multiplier from the proposed rule to avoid instances where a loan with a limited subsidy would qualify for the risk multiplier.

FHFA received several additional comments on the multifamily risk multipliers in the 2018 proposal. Two commenters recommended FHFA add granularity to the interest-only risk multiplier, with one commenter suggesting gradations be added to the risk multiplier for the length of the interest-only term, or at least a differentiation for a partial interest-only versus a full interest-only. FHFA is proposing the interest-only risk multiplier as in the 2018 proposal because FHFA continues to believe in the validity of the analysis supporting the interest-only risk multiplier. In that analysis, historical data with which to calibrate an interest-only risk multiplier by interest-only term length was limited, and feedback from the industry participants with whom FHFA consulted disagreed as to the nature of a more granular risk multiplier. Another commenter recommended FHFA add risk multipliers for additional product types such as construction and mod-rehab loans, for loan features such as cross-collateralization, and for non-financial structural terms such as borrower covenants. While FHFA acknowledges different product types and features may represent differential levels of risk, the risk multipliers were selected in part due to data availability, and in part because FHFA concluded that the risk multipliers would represent a simple and transparent way to adjust the base capital requirements for the most important multifamily risks faced by an Enterprise in a regulatory capital framework.

Question 58. Are the risk multipliers for multifamily mortgage exposures appropriately formulated and calibrated to require credit risk capital sufficient to ensure each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle?

Question 59. Are there any adjustments, simplifications, or other refinements that FHFA should consider for the risk multipliers for multifamily exposures?

Question 60. Should the combined risk multiplier for a multifamily mortgage exposure be subject to a floor or a cap?

6. Minimum Adjusted Risk Weight

The 2018 proposal acknowledged that combinations of overlapping characteristics could potentially result in unduly low credit risk capital requirements for certain multifamily mortgage exposures. Under the 2018 proposal, the Enterprises were required to impose a floor of 0.5 to any combined multifamily risk multiplier. FHFA has taken a somewhat different approach in the proposed rule. As for single-family mortgage exposures, the proposed rule would establish a floor on the adjusted risk weight for a multifamily mortgage exposure equal to 15 percent.

First, as discussed in Section IV.B, a risk weight floor is appropriate to mitigate certain risks and limitations associated with the underlying historical data and models. These risks include the potential that crisis-era losses were mitigated by the unprecedented federal government support of the economy and the impact of lower interest rates. In addition, they include potentially material risks that are not assigned a risk-based requirement, for example those that might arise from natural or other disasters.

Second, comparison to the U.S. banking framework's credit risk capital requirements for similar exposures contributed to FHFA's view that a risk weight floor is appropriate, while also raising important questions as to the sizing of that risk weight floor. As of September 30, 2019, with the proposed 15 percent risk weight floor, the average pre-CRT net credit risk capital requirement on the Enterprises' multifamily mortgage exposures would have been 4.1 percent of unpaid principal balance, implying an average risk weight of 51 percent. That 51 percent average risk weight is only modestly greater than the 50 percent average risk weight without the floor. The U.S. banking framework generally assigns a 100 percent risk weight to multifamily mortgage exposures to determine the credit risk capital requirement (equivalent to an 8.0 percent adjusted total capital requirement), although some multifamily mortgage exposures are eligible for a 50 percent risk weight. Before adjusting for the capital buffers under the proposed rule and the U.S. banking framework, the Enterprises' credit risk capital requirements for multifamily mortgage exposures would have been roughly half that of the default risk weight under the U.S. banking framework.

This comparison is complicated by the fact that the 51 percent average risk weight reflects adjustments for MTMLTV. In particular, some meaningful portion of the gap currently between the credit risk capital requirements of the Enterprises and U.S. banking organizations under the proposed rule is due to the proposed rule's use of MTMLTV instead of OLTV, as under the U.S. banking framework, to assign credit risk capital requirements for mortgage exposures. In a different economic environment, perhaps after several years of declining multifamily property prices, the mark-to-market framework could have resulted in higher credit risk capital requirements than the U.S. banking framework.[71]

However, the current gap between the credit risk capital requirements of U.S. banking organizations and the Enterprises under the proposed rule is still informative to the calibration of an appropriate risk weight floor. FHFA sized the 15 percent risk weight floor to mirror the risk weight floor for single-family mortgage exposures. FHFA is soliciting comment on that sizing, in particular whether a multifamily-specific risk-weight floor might be more appropriate.

Question 61. Is the minimum floor on the adjusted risk weight for a multifamily mortgage exposure appropriately calibrated to mitigate model and related risks associated with the calibration of the underlying base risk weights and risk multipliers and to otherwise ensure each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission across the economic cycle?

Question 62. Should the minimum floor on the adjusted risk weight for a multifamily mortgage exposure be decreased or increased, perhaps to align the minimum floor with the more risk-sensitive standardized risk weights assigned to similar exposures under the Basel or U.S. banking framework?

Question 63. Should the risk weight floor for a multifamily mortgage exposure be different from the risk weight floor for a single-family mortgage exposure?

Question 64. Should the floor or other limit used to determine a multifamily mortgage exposure's credit risk capital requirement be assessed against the base risk weight, the risk weight adjusted for the risk multipliers, or some other input used to determine that credit risk capital requirement?

C. CRT and Other Securitization Exposures

1. Background

a. PLS and CMBS Investments

The Enterprises have exposure to PLS and commercial mortgage-backed securities (CMBS) to the extent that they invest in PLS or CMBS or guarantee PLS or CMBS that have been re-securitized by an Enterprise. In the lead up to the 2008 financial crisis, each Enterprise substantially increased its investments in PLS, and those PLS investments were a source of a meaningful portion of each Enterprise's initial crisis-era capital exhaustion. The Enterprises have not acquired material amounts of PLS since 2008. However, the Enterprises do retain some relatively small amount of legacy PLS, and each Enterprise might acquire PLS in the future, subject to any regulations that FHFA may prescribe. The proposed rule therefore contemplates regulatory capital requirements for the credit, spread, and operational risk posed by these PLS and CMBS exposures.

b. Single-Family CRT

CRT transactions provide credit protection beyond that provided by loan-level credit enhancements. CRT can be viewed as an Enterprise paying a portion of its guarantee fee as a cost of transferring credit risk to private sector investors. To date, single-family CRT have included transferring expected and unexpected losses. The Enterprises have developed a variety of single-family CRT product types, including structured debt issuances (known as Structured Agency Credit Risk (STACR) for Freddie Mac and Connecticut Avenue Securities (CAS) for Fannie Mae), insurance/reinsurance transactions (known as Agency Credit Insurance Structure (ACIS) for Freddie Mac and Credit Insurance Risk Transfer (CIRT) for Fannie Mae), and senior-subordinate securities.

The STACR and CAS securities account for the majority of single-family CRT to date. These securities are issued as notes from a trust and do not constitute the sale of mortgage loans or their cash flows. Instead, STACR and CAS are considered to be synthetic notes because their cash flows are determined by the credit risk performance of a notional reference pool of mortgage loans. For the STACR and CAS transactions, the Enterprises receive the proceeds of the note issuance at the time of sale to investors. The Enterprises pay interest to investors on a monthly basis and allocate principal to investors based on the repayment and credit performance of the single-family mortgage exposures in the underlying reference pool. Investors ultimately receive a return of their principal, less any covered credit losses. The transactions are fully collateralized since investors pay for the notes in full. Thus, the Enterprises do not bear any counterparty credit risk on debt transactions.

Pool-level reinsurance transactions such as CIRT and ACIS, which generally cover hundreds or thousands of single-family mortgage loans, are considered CRT. Pool insurance transactions are typically structured with an aggregated loss amount. The Enterprises, as policy holders, typically retain some portion (or all) of the first loss. The cost of pool-level insurance is generally paid by the Enterprise, not the lender or borrower. In general, an Enterprise may bear counterparty credit risk because insurance transactions are not fully collateralized. This counterparty credit risk may be somewhat mitigated, however, by conducting transactions with diversified reinsurers that have books of business that may be less correlated with the Enterprises or with insurers in compliance with an Enterprise's insurer eligibility standards.

In a senior-subordinate (senior-sub) securitization, the Enterprise sells a

[71] In consideration that the U.S. banking framework utilizes OLTVs, a comparison of the credit risk capital requirements for newly acquired multifamily mortgage exposures under the 2018 proposal and the proposed rule provides the most direct comparison of credit risk capital requirements for new originations. Under the proposed rule, gross credit risk capital (prior to adjustments for CRT) on newly acquired multifamily mortgage exposures as of September 30, 2019, with an average MTMLTV of approximately 67 percent, would have been approximately 5.3 percent of unpaid principal balance, implying an average risk weight of 67 percent. This compares to the 100 percent default risk weight generally applicable under the U.S. banking framework. These risk weights would then decline to the extent multifamily property prices appreciate or increase to the extent multifamily property prices depreciate.

pool of single-family mortgage exposures to a trust that securitizes cash flows from the pool into several tranches of bonds, similar to PLS transactions. The subordinated bonds, also called mezzanine and first-loss bonds, provide the credit protection for the senior bond. Unlike STACR and CAS, the bonds created in a senior-sub transaction are MBS, not synthetic securities. In addition, unlike typical MBS issued by the Enterprises, generally only the senior tranche is guaranteed by the Enterprise.

Historically the Enterprises have also engaged in front-end (or upfront) lender risk sharing transactions similar to CRT, but the single-family lender risk sharing programs will be discontinued by year-end 2020.

c. Multifamily CRT

The Enterprises also reduce the credit risk on their multifamily guarantee books of business by transferring and sharing risk through multifamily CRT. As discussed in Section VIII.B.1, the Enterprises have historically operated different multifamily business models, which has led to the utilization of two broad types of multifamily CRT: Loss sharing and securitizations. Within each type, individual CRT transactions can have unique structures. The proposed rule's approach would be general enough to accommodate the full range of multifamily CRT currently utilized by the Enterprises.

The loss sharing CRT structure is a front-end risk transfer, which is defined as a CRT an Enterprise enters into with a lender before the lender delivers the loan to the Enterprise. The Enterprise and lender share future losses according to a specified arrangement, commonly from the first dollar of loss, and in exchange the lender is compensated for taking on credit risk. Because these transactions are not always fully collateralized, a loss sharing CRT generally exposes the Enterprise to counterparty credit risk.

In the multiclass securitization CRT structure, an Enterprise sells a pool of multifamily mortgage exposures to a trust that securitizes cash flows from the pool into several tranches of bonds. The subordinated bonds, also called mezzanine and first-loss bonds, are sold to market participants. These subordinated bonds provide credit protection for the senior bond, which is the only tranche that is guaranteed by the Enterprise. These sales typically result in a significant transfer of the credit risk on the underlying multifamily mortgage exposures.

In addition to, and often on top of, loss sharing and securitization CRT structures, the Enterprises also transfer multifamily credit risk using reinsurance CRT transactions. In these back-end transactions, such as Fannie Mae's CIRT program, an Enterprise enters into agreements with third parties to cover losses on a pool of multifamily mortgage exposures up to a certain percentage. The Enterprise, as policy holder, typically retains some portion (or all) of the first losses on the pool and compensates the third parties, generally reinsurers, for bearing subsequent losses up to a detachment point. To the extent that these deals are not fully collateralized, the proposed rule would increase an Enterprise's post-deal exposure to reflect counterparty risk.

2. PLS and Other Non-CRT Securitization Exposures

As contemplated by the 2018 proposal, an Enterprise would determine its credit risk capital requirement for PLS and other securitization exposures under a securitization framework that would be substantially the same as that of the U.S. banking framework. As discussed in Section VIII.C.3, an Enterprise may elect to determine its credit risk capital requirement for a retained CRT exposure under a somewhat different framework, even if that retained CRT exposure might be similar to an exposure to a traditional or synthetic securitization under the securitization framework.

The exposure amount of an Enterprise's on-balance sheet securitization exposure generally would be the carrying value of the exposure, while the exposure amount of an off-balance sheet securitization exposure generally would be the notional amount of the exposure.[72]

An Enterprise generally would assign a risk weight for a PLS or other securitization exposure using the simplified supervisory formula approach (SSFA). Pursuant to the SSFA, an Enterprise would determine the risk weight for a securitization exposure using a formula that is based, among other things, on the subordination level of the securitization exposure and the adjusted aggregate credit risk capital requirement of the underlying exposures. A 1,250 percent risk weight would be assigned to any securitization exposure that absorbs losses up to the adjusted aggregate credit risk capital requirement of the underlying exposures. After that point, the risk weight for a securitization exposure would be assigned pursuant to an exponential decay function that decreases as the detachment point or attachment point increases, subject to a minimum risk weight of 20 percent.

At the inception of a securitization, the SSFA's exponential decay function for risk weights, together with the 20 percent risk weight floor, would require more regulatory capital on a transaction-wide basis than would be required if the underlying exposures had not been securitized. That is, if the Enterprise held every tranche of a securitization, its overall regulatory capital requirement would be greater than if the Enterprise owned all of the underlying exposures. Like the U.S. banking regulators, FHFA believes this outcome is important to reduce regulatory capital arbitrage through securitizations and to manage the structural and other risks that might be posed by a securitization.[73]

3. Retained CRT Exposures

a. Assessment Framework

As discussed in the 2018 proposal, FHFA has established certain core principles to guide the developments of the Enterprises' CRT programs. Each CRT must transfer a meaningful amount of credit risk to private investors to reduce risk to the Enterprises, and the cost of the CRT must be economically sensible. In addition, a CRT must not interfere with the Enterprise's core business, including the ability of borrowers to access credit. The CRT programs have been intended to attract a broad investor base, be scalable, and incorporate a regular program of issuances. In transactions where credit risk may not be fully collateralized, the CRT counterparties must be financially strong, post collateral for a portion of their exposure, and be expected to fulfill

[72] For both on- and off-balance sheet securitization exposures, there would be special rules for determining the exposure amount and risk weights for repo-style transactions, eligible margin loans, OTC derivative contracts, and derivatives that are cleared transactions (other than credit derivatives).

[73] *See Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule,* 78 FR 62018, 62119 (Oct. 11, 2013) (hereinafter Joint Agency Regulatory Capital Final Rule) (''At the inception of a securitization, the SSFA requires more capital on a transaction-wide basis than would be required if the underlying assets had not been securitized. That is, if the banking organization held every tranche of a securitization, its overall capital requirement would be greater than if the banking organization held the underlying assets in portfolio. The agencies believe this overall outcome is important in reducing the likelihood of regulatory capital arbitrage through securitizations.'').

their commitments in adverse market conditions.

FHFA has continued to refine the assessment framework based on its understanding of the safety and soundness risks and limits relating to the effectiveness of CRT in transferring credit risk on the underlying exposures. Commenters on the 2018 proposal argued that CRT has less loss-absorbing capacity than an equivalent amount of equity financing. FHFA agrees that CRT transfers credit risk only on a specified reference pool, while equity financing is available to ''cross cover'' credit risk on other exposures of the Enterprise. FHFA also agrees that CRT transfers only credit risk, while equity financing can absorb losses arising from operational and market risks. Related to this, an Enterprise generally may pause distributions on equity financing during a financial stress but typically must continue debt service or other payments on CRT instruments. Therefore, equity financing provides more robust safety and soundness benefits across exposures and risks than a similar amount of credit exposure transferred through CRT.

One of the lessons of the 2008 financial crisis is that securitization structures, especially complex securitizations, might not perform as expected during a financial stress, with some large banking organizations even electing to reconsolidate some of their securitizations.[74] Similarly, there might be unique legal risks posed by the contractual terms of CRT structures and by the practices associated with contractual enforcement. While the 2018 proposal already contemplated reductions to the capital relief provided by a CRT based on the counterparty risk and maturity-related risk of CRT, FHFA agrees that there are structural and other risks that were not reflected in those adjustments that could further limit the effectiveness of CRT in transferring credit risk. FHFA continues to look to opportunities to enhance its framework for assessing the Enterprises' CRT programs to mitigate these safety and soundness risks.

Besides safety and soundness, FHFA's assessment framework also considers the extent to which an Enterprise's CRT program could limit the Enterprise's ability to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle. As discussed in the 2018 proposal, a financial stress could reduce investor demand for, or increase the cost of, new CRT issuances or undermine the financial strength of some existing CRT counterparties. The pro-cyclicality of some CRT structures could adversely impact an Enterprise's ability to support the secondary mortgage market if an Enterprise were not to have sufficient equity financing to support new acquisitions of mortgage exposures. To fulfill its mission, an Enterprise should avoid overreliance on CRT and should maintain at least enough equity capital to support new originations during a period of financial stress, when new CRT issuances might not be available. For these and other reasons, capital relief for CRT under the 2018 proposal did not extend to the going- concern buffer, and the proposed rule also would not provide CRT capital relief for the capital conservation buffer.

FHFA's assessment framework also seeks to prevent each Enterprise's CRT program from undermining the liquidity, efficiency, competitiveness, or resiliency of the national housing finance markets. Some CRT structures might tend to increase the leverage in the housing finance system, especially to the extent some CRT investors themselves rely on short-term debt funding. The disruption in the CRT markets during the recent COVID–19-related financial stress might have been driven in part by leveraged market participants that had invested in CRT rapidly de-levering when confronted by margin calls on short-term financing.

b. Enhancements to the 2018 Proposal

FHFA is proposing enhancements to the 2018 proposal's regulatory capital treatment of CRT to refine its balancing of the safety and soundness benefits of CRT against the potential safety and soundness, mission, and housing market stability risks that might be posed by CRT.

Consistent with the U.S. banking framework, FHFA is proposing operational criteria to mitigate the risk that the terms or structure of the CRT would not be effective in transferring credit risk. FHFA's proposed operational criteria would provide capital relief on a CRT only if certain conditions are satisfied, including:

- The CRT is of a category of CRT structures that has been approved by FHFA as effective in transferring credit risk.
- The terms and conditions in the CRT do not include provisions that might undermine the effectiveness of the transfer of the credit risk (*e.g.,* by allowing for the termination of the CRT due to deterioration in the credit quality of the underlying exposures).
- Clean-up calls relating to the CRT are limited to specified circumstances.
- The Enterprise publicly discloses—
  - The material recourse or other risks that might reduce the effectiveness of the CRT in transferring credit risk; and
  - Each operational criterion for a traditional securitization or a synthetic securitization that is not satisfied by the CRT and the reasons that each such condition is not satisfied.

These operational criteria for CRT are less restrictive than those applicable to traditional or synthetic securitizations under the U.S. banking framework. For example, a senior/subordinated structure need not be off-balance sheet under GAAP, as required for traditional securitizations under the U.S. banking framework, while a financial guarantee need not be provided by a company that is not predominantly engaged in the business of providing credit protection, as required for an eligible guarantee under the U.S. banking framework. To partially mitigate the safety and soundness risks posed by this less restrictive approach, FHFA would require an Enterprise to publicly disclose material risks to the effectiveness of the CRT so as to foster market discipline and FHFA's supervision and regulation. FHFA is also seeking comment on other operational criteria it might adopt for CRT.

[74] *See Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Regulatory Capital; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues,* 74 FR 47138, 47142 (Sept. 15, 2009) (''In the case of some structures that banking organizations were not required to consolidate prior to the 2009 GAAP modifications, the recent turmoil in the financial markets has demonstrated the extent to which the credit risk exposure of the sponsoring banking organization to such structures (and their related assets) has in fact been greater than the agencies estimated, and more associated with non-contractual considerations than the agencies had expected. For example, recent performance data on structures involving revolving assets show that banking organizations have often provided non-contractual (implicit) support to prevent senior securities of the structure from being downgraded, thereby mitigating reputational risk and the associated alienation of investors, and preserving access to cost-effective funding.''); *see also* FCIC Report at 246, available at *https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf* (''When the mortgage securities market dried up and money market mutual funds became skittish about broad categories of ABCP, the banks would be required under these liquidity puts to stand behind the paper and bring the assets onto their balance sheets, transferring losses back into the commercial banking system. In some cases, to protect relationships with investors, banks would support programs they had sponsored even when they had made no prior commitment to do so.''); *see also FCIC Report* at 138–139 (''The events of 2007 would reveal the fallacy of those assumptions and catapult the entire $25 billion in commercial paper straight onto the bank's balance sheet, requiring it to come up with $25 billion in cash as well as more capital to satisfy bank regulators.'').

FHFA is also proposing to prescribe the regulatory capital consequences of an Enterprise providing support to a CRT in excess of the Enterprise's pre-determined contractual obligations. As under the U.S. banking framework, if an Enterprise provides implicit support for a CRT, the Enterprise would be required to include in its risk-weighted assets all of the underlying exposures associated with the CRT as if the exposures were not covered by the CRT. The Enterprise also would be required to disclose publicly (i) that it has provided implicit support to the CRT and (ii) the risk-based capital impact to the Enterprise of providing that implicit support. These requirements are intended to discourage an Enterprise from providing implicit support during a financial stress or otherwise, for example by providing financing to CRT investors or by repurchasing CRT exposures during a financial stress.

Generally consistent with the U.S. banking framework, FHFA also is proposing a prudential floor of 10 percent on the risk weight assigned to any retained CRT exposure. Under the 2018 proposal, a retained CRT exposure with a detachment point less than the net credit risk capital requirement of the underlying mortgage exposures would, in effect, have had a risk weight of 1,250 percent, while a retained exposure with an attachment point only marginally greater than that net credit risk capital requirement would have had a risk weight of 0 percent. A retained CRT exposure with an attachment point just beyond that cut-off point likely still would pose some credit risk as a result of the model risks associated with the calibration of the credit risk capital requirement of the underlying exposures, and also the risk that a CRT will not perform as expected in transferring credit risk to third parties.[75] The prudential floor for a retained CRT exposure avoids treating that exposure as posing no credit risk.

The 10 percent minimum risk weight is less than the 20 percent minimum risk weight under the U.S. banking framework for securitization exposures. FHFA's sizing of the minimum risk weight seeks to strike an appropriate balance between permitting CRT while also mitigating the safety and soundness, mission, and housing stability risk that might be posed by some CRT. FHFA is soliciting comment on whether to align the risk weight floor for retained CRT exposures with the various different floors for securitizations exposures under the Basel and U.S. banking frameworks.

Finally, FHFA is proposing refinements to the adjustments to the regulatory capital treatment of CRT for the counterparty, loss-timing, and other risks that a CRT might not be effective in transferring credit risk to third parties. As discussed in Section VIII.C.3.c, FHFA is proposing to refine the 2018 proposal's adjustments for counterparty risk and loss-timing risk, and proposing to add a general adjustment for the differences between CRT and regulatory capital. These CRT-specific adjustments do introduce some complexity, and as discussed in Section VIII.C.3.d, FHFA is also soliciting comment on an alternative approach based on the U.S. banking framework's SSFA that is simpler but also less tailored.

Under either FHFA's proposed or alternative approach, at the inception of a CRT, FHFA generally would require more credit risk capital on a transaction-wide basis than would be required if the underlying mortgage exposures had not been made subject to a CRT. That is, if an Enterprise held every tranche of a CRT, its credit risk capital requirement on the retained CRT exposures generally would be greater than the credit risk capital requirement of the underlying mortgage exposures. As under the securitization framework, this departure from strict capital neutrality is important to manage the potential safety and soundness risks of CRT. This approach would help mitigate the model risk associated with the calibration of the credit risk capital requirements of the underlying exposures and also the model risk posed by the calibration of the adjustments for loss-timing and counterparty risks.[76] Complex CRT also may pose structural risk and other risks that merit a departure from capital neutrality.[77] This departure from capital neutrality also is important to reducing the likelihood of regulatory capital arbitrage through CRT.[78]

One implication of departing from capital neutrality is that an Enterprise might have some existing CRT structures for which the aggregate credit risk capital requirement of the retained CRT exposures actually would be greater than the aggregate credit risk capital requirement of the underlying exposures. This outcome might be more likely, all else equal, where the underlying exposures have a lower average risk weight, for example, a CRT with respect to seasoned single-family mortgage exposures. As under the U.S. banking framework, an Enterprise may elect to not recognize a CRT for purposes of the credit risk capital requirements and instead hold risk-based capital against the underlying exposures. FHFA has assumed for purposes of the proposed rule that an Enterprise would make this election in those cases where the aggregate credit risk capital requirement of the underlying exposures is less than that of the retained CRT exposures.

Question 65. What changes, if any, should FHFA consider to the operational criteria for CRT?

Question 66. What changes, if any, should FHFA consider to the regulatory consequences of an Enterprise providing implicit support to a CRT?

Question 67. Is the 10 percent prudential floor on the risk weight for a retained CRT exposure appropriately calibrated?

Question 68. Should FHFA increase the prudential floor on the risk weight for a retained CRT exposure, for example so that it aligns with the 20

[75] For these and other reasons, the Basel and U.S. banking frameworks impose a prudential floor on the risk weight for any securitization exposure. BCBS, *Revisions to the Securitisation Framework Consultative Document* at 17 (Dec. 2013; final July 2016), available at *https://www.bis.org/publ/bcbs269.pdf.* (''The objectives of a risk-weight floor are: [m]itigate concerns related to incorrect model specifications and error from banks' estimates of inputs to capital formulas ([*i.e.*] model risk); and [r]educe the variation in outcomes for similar risks.'').

[76] BCBS, *Revisions to the Securitisation Framework Consultative Document* at 4 (Dec. 2013; final July 2016), available at *https://www.bis.org/publ/bcbs269.pdf.* (''Capital requirements should be calibrated to reasonably conservative standards. This requires the framework to account for the model risk of determining the risks of specific exposures. Models for securitisation tranche performance depend in turn on models for underlying pools. In addition, securitisations have a wide range of structural features that do not exist for banks holding the underlying pool outright and that are impossible to capture in models. This layering of models and simplifying assumptions can exacerbate model risk, justifying a rejection of a strict ''capital neutrality'' premise ([*i.e.*] the total capital required after securitisation should not be identical to the total capital before securitisation).'').

[77] BCBS, *Revisions to the Securitisation Framework* at 6 (Dec. 2014; rev. July 2016), available at *https://www.bis.org/bcbs/publ/d374.pdf* (''All other things being equal, a securitisation with lower structural risk needs a lower capital surcharge than a securitisation with higher structural risk; and a securitisation with less risky underlying assets requires a lower capital surcharge than a securitisation with riskier underlying assets.'').

[78] *See* Joint Agency Regulatory Capital Final Rule, 78 FR at 62119 (''At the inception of a securitization, the SSFA requires more capital on a transaction-wide basis than would be required if the underlying assets had not been securitized. That is, if the banking organization held every tranche of a securitization, its overall capital requirement would be greater than if the banking organization held the underlying assets in portfolio. The agencies believe this overall outcome is important in reducing the likelihood of regulatory capital arbitrage through securitizations.'').

percent minimum risk weight under the U.S. banking framework?

Question 69. Should FHFA take a different approach to an Enterprise's existing CRT?

c. Adjustments to CRT Capital Relief

The proposed rule would implement a framework through which an Enterprise would determine its credit risk-weighted assets for any retained CRT exposures and any other credit risk that might be retained on its CRT. An Enterprise would calculate credit risk-weighted assets for retained credit risk in a CRT using risk weights and exposure amounts for each CRT tranche. The exposure amount of the retained CRT exposures for each tranche would be increased by adjustments to reflect counterparty credit risk and the length of CRT coverage (*i.e.,* remaining time until maturity). The proposed rule would also set a credit risk capital requirement floor for retained risk effectuated through a tranche-level risk weight floor.

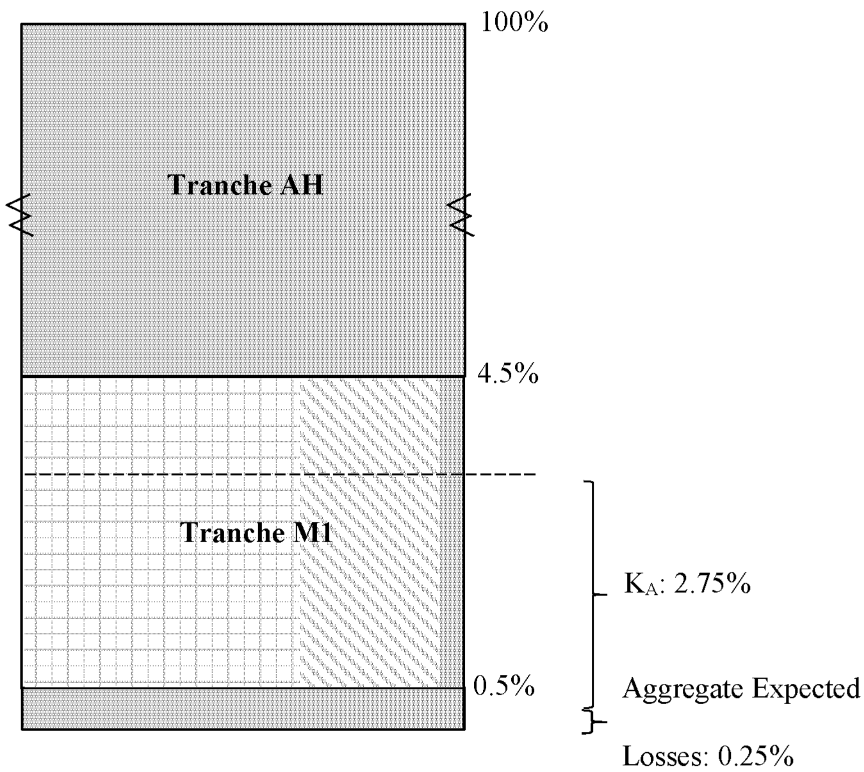
In addition, the approach would reduce the risk-weighted assets for risk sold by 10 percent to account for the fact that CRT transactions do not provide the same protection as regulatory capital. As discussed by several commenters on the 2018 proposal, the credit protection from a CRT is not fungible to cover losses on other exposures. Furthermore, during a financial stress the Enterprises can stop equity dividend payments whereas the cost of CRT credit protection, in many cases, is an ongoing liability. Therefore, for each tranche, an Enterprise would reduce the risk-weighted assets assigned to private investors or covered by a loss sharing agreement by 10 percent and add the reduction to the Enterprise's apportioned exposure amount in the tranche.

Overall, the proposed rule would require each Enterprise to hold either: (i) Credit risk capital on any credit risk which it has retained or to which it is otherwise exposed (including non-transferable counterparty credit risk on the CRT's underlying mortgage exposures); or (ii) the aggregate credit risk capital on the CRT's underlying mortgage exposures. If the Enterprise chooses the former, then in general, an Enterprise would be required to hold less regulatory capital for CRT transactions that provide coverage (i) on a higher percentage of unexpected losses, (ii) for a longer period, and (iii) with lower levels of counterparty credit risk.

The following example provides an illustration of the proposed rule's capital requirements if an Enterprise elects to hold capital against the credit risk from its retained CRT exposures. Consider the following inputs from an illustrative CRT (see Figure 3):

- $1,000 million in unpaid principal balance of performing 30-year fixed rate single-family mortgage exposures with OLTVs greater than 60 percent and less than or equal to 80 percent;
- CRT coverage term of 10 years;
- Three tranches—B, M1, and AH—where tranche B attaches at 0% and detaches at 0.5%, tranche M1 attaches at 0.5% and detaches at 4.5%, and tranche AH attaches at 4.5% and detaches at 100%;
- Tranches B and AH are retained by the Enterprise, and ownership of tranche M1 is split between capital markets (60 percent), a reinsurer (35 percent), and the Enterprise (5.0 percent);
- The aggregate credit risk-weighted assets on the single-family mortgage exposures underlying the CRT are $343.8 million;
- Aggregate expected losses on the single-family mortgage exposures underlying the CRT of $2.5 million; and
- The reinsurer posts $2.8 million in collateral, has a counterparty financial strength rating of 3, and does not have a high level of mortgage concentration risk.

Figure 3: Single-Family CRT Example



Ownership:

Tranche AH: 100% retained (in solid gray).

Tranche M1: 60% to capital markets (gray

grid lines), 35% reinsured (in gray diagonal

The Enterprises would first calculate the risk weights for each tranche assuming full effectiveness of the CRT in transferring credit risk on the underlying mortgage exposures. In general, tranche risk weights are the highest for the riskiest, most junior tranches (such as tranche B), and lower for the more senior tranches (such as tranches M1 and AH). For the illustrative CRT, the overall risk weights for tranches AH, M1, and B are 10%, 781%, and 1,250%, where 10% reflects the minimum risk weight.

$$RW_{\%,AH} = 10\%\ because\ K_A + AggEL_{\%} \leq 4.5\%$$

$$RW_{\%,M1} = 1250\% * \frac{K_A + AggEL_{\%} - 0.5\%}{4.5\% - 0.5\%} = 781\%\ because\ 0.5\% < K_A + AggEL_{\%} < 4.5\%$$

$$RW_{\%,B} = 1250\%\ becasue\ K_A + AggEL_{\%} \geq 0.5\%$$

where

$$K_A = 100\% * \frac{RWA_\$ * 8\%}{AggUPB_\$} = 100\% * \frac{\$343.8m * 8\%}{\$1000m} = 2.75\%$$

$$AggEL_{\%} = 100\% * \frac{EL\$}{AggUPB_\$} = 100\% * \frac{\$2.5m}{\$1000m} = 0.25\%.$$

Next, the Enterprise would calculate the adjusted exposure amount of its retained CRT exposures to reflect the effectiveness of the CRT in transferring credit risk on the underlying mortgage exposures. For the illustrative CRT, tranches AH and B are retained by the Enterprise, and do not need further adjustment. Risk associated with tranche M1 is transferred through a capital markets transaction and a loss sharing agreement. Risk transfer on this tranche is subject to the following three effectiveness adjustments, which are reflected in the Enterprise's adjusted exposure amount: Loss sharing effectiveness adjustment (LSEA), loss timing effectiveness adjustment (LTEA), and overall effectiveness adjustment (OEA).

To account for the effectiveness of loss sharing on tranche M1, the proposed rule would adjust its exposure amount on tranche M1 to reflect the retention of some of the counterparty credit risk that was nominally transferred to the counterparty. The proposed rule adjusts effectiveness for (i) uncollateralized unexpected loss (UnCollatUL) and (ii) uncollateralized risk-in-force above stress loss (SRIF). For the illustrative CRT, the counterparty haircut is 5.2% as per the proposed single-family CP haircuts, from Table 21, UnCollatUL is 42.5%, and SRIF is 37.5%. The proposed rule's LTEA on tranche M1 would be 96.4%.

$$LSEA_{\%,M1} = \left(1 - 5.2\% * \frac{(UnCollatUL_{\%,M1} * 1250\% + SRIF_{\%,M1} * 10\%)}{RW_{\%,M1}}\right) = 96.4\%$$

where

$$UnCollatUL_{\%,M1} = 100\% * \left(\frac{K_A + AggEL_{\%} - A}{D - A}\right) - Collat_{\%RIF,M1}$$

$$UnCollatUL_{\%,M1} = 100\% * \left(\frac{3\% - 0.5\%}{4.5\% - 0.5\%}\right) - 100\% * \frac{\$2.8m}{\$1{,}000 * (4.5\% - 0.5\%) * 35\%} = 42.5\%$$

$$SRIF_{\%,M1} = 100\% - 100\% * \max\left(\left(\frac{3\% - 0.5\%}{4.5\% - 0.5\%}\right), \frac{\$2.8m}{\$1{,}000 * (4.5\% - 0.5\%) * 35\%}\right) = 37.5\%$$

To account for effectiveness from the timing of coverage, the proposed rule would adjust the Enterprise's exposure amount for tranche M1 to reflect the retention of some loss timing risk that was nominally transferred. The loss timing factor addresses the mismatch between lifetime losses on the 30-year fixed-rate single-family mortgage exposures underlying the CRT and the CRT's coverage. The loss timing factor for the illustrative CRT with 10 years of coverage and backed by 30-year fixed-rate single-family whole loans and guarantees with OLTVs greater than 60 percent and less than or equal to 80 percent is 88 percent for both the capital markets transaction and loss sharing agreement. For the illustrative CRT, tranche M1's LTEA is 85.6% and is derived by scaling stress loss by the 88% loss timing factor.

$$LTEA_{\%,M1} = 100\% * \frac{LTK_{A,LS} + AggEL_{\%} - A}{K_A + AggEL_{\%} - A} = 100\% * \frac{2.39\% + 0.25\% - 0.5\%}{2.75\% + 0.25\% - 0.5\%} = 85.6\%$$

where

$LTK_{A\,\%} = \max((2.75\% + 0.25\%) * 88\% - 0.25\%, 0\%) = 2.39\%$

For the last adjustment, the proposed rule would include a 10% overall reduction in capital relief to reflect for the fact that CRT transactions do not provide the same loss-absorbing capacity as regulatory capital (OEA).

$OEA_{\%} = (1 - 10\%) = 90\%$

The adjusted exposure amounts (AEAs) combine the effectiveness adjustments, aggregate UPB, tranche thickness, and an adjustment for expected losses (to tranche B in the example). For the illustrative CRT, the proposed rule would calculate AEAs as follows:

$$AEA_{\%,AH} = EAE_{\%,AH} * AggUPB_{\$} * (D - A) = \$1{,}000m * (100\% - 4.5\%) = \$955m$$

$$AEA_{\%,M1} = EAE_{\%,M1} * AggUPB_{\$} * (D - A) = 27.8\% * \$1{,}000m * (4.5\% - 0.5\%) = \$11.1m$$

$$AEA_{\%,B} = EAE_{\%,B} * AggUPB_{\$} * (D - A) * \left(1 - \frac{AggEL_{\%} - A}{D - A}\right)$$

$$= \$1{,}000m * (0.5\% - 0\%) * 50\% = \$2.5m$$

where the Enterprise's adjusted exposures (EAEs) for tranches A and B are 100% and

$EAE_{\%,M1} = 100\% - (60\% * 85.6\% * 90\%) - (35\% * 96.4\% * 85.6\% * 90\%) = 27.8\%$.

Finally, to calculate risk weighted assets after CRT, the proposed rule combines AEAs with the tranche-level risk weights. For the illustrative CRT, the proposed rule would calculate risk weighted assets (RWA) as follows:

$RWA_{\$,AH} = AEA_{\$,AH} * RW_{\%,AH} = \$955m * 10\% = 95.5m$

$RWA_{\$,M1} = AEA_{\$,M1} * RWA_{\%,M1} = 11.1m * 781\% = 86.7m$

$RWA_{\$,B} = AEA_{\$,B} * RW_{\%,B} = 2.5m * 1250\% = \$31.3m$

with total RWAs on the retained CRT exposures at $213.5 million, a decline of $130.3 million from the aggregate credit risk-weighted assets on the underlying single-family mortgage exposures of $343.8 million.

Seasoned CRT

A seasoned CRT differs from when it was newly issued due to the changing risk profile on the mortgage exposures underlying the CRT, and changes to the CRT structure which may have developed since issuance. Therefore, an Enterprise would be required to periodically re-calculate capital adjustments on its seasoned CRT transactions.

For each seasoned CRT, the proposed rule would require the Enterprise to update the data elements originally considered. In particular, the proposed rule would require the Enterprise to update credit risk capital and expected losses on the underlying whole loans and guarantees, tranche structure, ownership, and counterparty credit risk.

CRT Prepayments

The rate at which principal on a CRT's underlying exposures is paid down (principal paydowns) affects the allocation of credit losses between the Enterprises and investors/reinsurers. Principal paydowns include regularly scheduled principal payments and unscheduled principal prepayments. In general, a CRT's tranches are paid down in the order of their seniority outlined in the CRT's transaction documents. For tranches with shared ownership, principal paydowns are allocated on a pro-rata basis. Under certain conditions unusually fast prepayments can erode the credit protection provided by the CRT by paying down the subordinate tranches and leave the Enterprises more vulnerable to credit losses. In particular, unexpectedly high prepayments can compromise the protection afforded by CRT and reduce the CRT's benefit or capital relief.

FHFA reviewed the effect on capital relief of applying stressful prepayment and loan delinquency projections to recent CRT. FHFA concluded that deal features, specifically triggers, mitigate the effects of fast prepayments by diverting unscheduled principal prepayments to the Enterprise-held senior tranche. For example, a minimum credit enhancement trigger redirects prepayments to the senior tranche when the senior credit enhancement falls below a pre-specified threshold. Similarly, a delinquency trigger diverts prepayments when the average monthly delinquency balance (*i.e.,* underlying single-family mortgage exposures that are 90 days or more delinquent, in foreclosure, bankruptcy, or REO) exceeds a pre-specified threshold.

FHFA considered whether it would be desirable to include language in the proposed rule requiring specific triggers in CRT transactions. However, FHFA decided against such language because variations across transactions complicate the establishment of fixed triggers that could be prudently applied uniformly across deals. Further, mandating a fixed set of triggers could reduce innovation in managing principal paydowns. For these reasons, FHFA believes that the proposed rule would appropriately consider single-family CRT prepayments.

Multifamily Loss-Timing Factors

One notable enhancement in the proposed CRT capital framework for multifamily mortgage exposures would be the application of multifamily loss timing factors. The loss timing factor would address the mismatch between lifetime multifamily losses on the whole loans and guarantees underlying a CRT and the term of coverage on the CRT. In the 2018 proposal, FHFA sought comment on how to implement a multifamily loss timing adjustment, but commenters did not suggest an approach. The proposed rule would implement a simple adjustment based on the contractual maturity of the CRT and the maturities of the underlying multifamily mortgage exposures.

Multifamily Counterparty Risk

In multifamily CRT transactions involving loss sharing and/or reinsurance agreements, an Enterprise is exposed to counterparty credit risk. In such instances, the Enterprise would consider posted collateral, concentration risk, and the financial strength of the counterparty before applying the counterparty haircut. In multifamily loss sharing agreements, the Enterprise would also consider at-risk servicing rights before applying the haircut.

In the proposed CRT capital framework, an Enterprise would be permitted to offset counterparty credit risk with collateral by reducing the Enterprise's uncollateralized exposure subject to a counterparty haircut. Fannie Mae has historically required DUS lenders to post collateral subject to certain terms and conditions, referred to as restricted liquidity, which Fannie Mae can access in the event of a lender default. In the proposed rule, restricted liquidity would be considered equivalent to other forms of collateral. In addition, as part of its DUS loss sharing agreements, Fannie Mae generally retains a contractual claim to the lenders' at-risk servicing rights that can be exercised by Fannie Mae under different circumstances. The 2018 proposal included a provision for an Enterprise to decrease its uncollateralized exposure by 50 percent if the Enterprise had any contractual claim to at-risk servicing rights. In response to comments that suggested FHFA should clarify the treatment of servicing rights, the proposed rule would include an updated treatment of servicing rights such that in the counterparty haircut calculation, an Enterprise may reduce its uncollateralized exposure by 1 year of estimated future servicing revenue if the Enterprise has a contractual claim to the at-risk servicing rights. FHFA believes that this more explicit accounting of the value of lender servicing rights would reduce the possibility of manipulation without materially affecting the magnitude of the adjustment to uncollateralized exposure in the CRT capital calculation.

In response to comments on the 2018 proposal, FHFA considered additional potential risk mitigants that may be present in loss-sharing CRT transactions such as entity-based capital, lender CRT transactions, and intrinsic risk-retention benefits, but opted not to include counterparty credit risk offsets for these features in the proposed rule. While these features may lead to benefits that decrease the credit risk faced by an Enterprise, FHFA does not have sufficient information to accurately quantify the magnitude of these potential benefits. However, to the extent that features such as entity-based capital and lender CRT transactions lead to stronger counterparty financial strength ratings, these loss mitigating factors would be reflected in an Enterprise's risk-based capital requirements in the form of smaller counterparty haircuts.

To calculate the counterparty haircut in the proposed rule, an Enterprise would use a modified version of the Basel IRB approach that considers the creditworthiness of the counterparty. Similar to the single-family discussion of how counterparty risk is amplified due to the correlation between a counterparty's credit exposure and the Enterprises' credit exposure (concentration risk), the proposed rule would assign larger haircuts to multifamily counterparties with higher levels of concentration risk relative to diversified counterparties. An Enterprise would assess the level of multifamily mortgage risk concentration for each individual counterparty to determine whether the counterparty is well diversified or whether it has a high concentration risk, and counterparties with a lower concentration risk would be assigned a smaller counterparty haircut relative to counterparties with higher concentration risk. This difference is captured through the asset valuation correlation multiplier, AVCM. An Enterprise would assign an AVCM of 1.75 to counterparties with high concentration risk and an AVCM of 1.25 to more well-diversified counterparties.

The counterparty haircut would be calculated as the product of stress loss given default (LGD), stress probability of default (PD), and a maturity adjustment for the asset. Along with the AVCM, other parameterization assumptions in the proposed rule include a stress LGD of 45 percent, a maturity adjustment calibrated to five years, a stringency level of 99.9 percent, and expected PDs calculated using an historical one-year PD matrix for all financial institutions. For each CRT that involves counterparty credit risk, an Enterprise would select a counterparty haircut and apply it to the uncollateralized exposure in the CRT. The proposed multifamily counterparty risk haircut multipliers are presented below in Table 25.

Table 25: Multifamily Counterparty Risk Haircut Multipliers by Concentration Risk

Counterparty Rating	CP Haircut for Concentration Risk: Not High	CP Haircut for Concentration Risk: High
1	2.1%	3.4%
2	5.3%	8.5%
3	6.0%	9.6%
4	12.7%	19.2%
5	16.2%	22.9%
6	22.5%	28.5%
7	41.2%	45.1%
8	48.2%	48.2%

Question 70. Is the proposed approach to determining the credit risk capital requirement for retained CRT exposures appropriately formulated?

Question 71. Are the adjustments for counterparty risk appropriately calibrated?

Question 72. Are the adjustments for loss-timing and other maturity-related risk appropriately calibrated?

Question 73. Is the 10 percent adjustment for the general effectiveness of CRT appropriately calibrated?

Question 74. Is the 10 percent adjustment for the general effectiveness of CRT appropriate in light of the proposed rule's prudential floor on the risk weight for retained CRT exposures?

Question 75. Should FHFA impose any restrictions on the collateral eligible to secure CRT that pose counterparty risk?

d. Alternative Approach

The proposed approach to CRT described under VIII.C.3.c has significant advantages over the approach to CRT taken by the Basel and U.S. banking framework's SSFA to the extent that it provides a more granular and mortgage risk-sensitive framework for determining the capital relief from CRT. There is, however, a trade-off between a more risk-sensitive approach and the complexity and other operational burdens of that more granular approach. FHFA is also soliciting comment on a simpler but less tailored alternative approach under which the Enterprise would determine the risk weight for a retained CRT exposure using the SSFA of the securitization framework. A 1,250 percent risk weight would be assigned to any retained CRT exposure that absorbs losses up to the adjusted aggregate credit risk capital requirement of the underlying exposures. After that point, the risk weight for the retained CRT exposure would be assigned pursuant to an exponential decay function that decreases as the detachment point or attachment point increases. The key difference from the SSFA under the securitization framework would be that the prudential floor for the risk weight for a retained CRT exposure would be 10 percent instead of 20 percent.

Under this approach, there would be no specific, tailored adjustment for counterparty risk or loss-timing risk or a general adjustment for the differences between CRT and equity financing. Instead, as under the Basel and U.S. banking framework's SSFA, FHFA proposes to use a supervisory adjustment factor, the constant term *p,* to determine the overall level of regulatory capital required for all tranches of a CRT under the SSFA. A higher value of *p* would increase the amount of regulatory capital required under the SSFA with detachment points beyond the adjusted aggregate credit risk capital requirement of the underlying exposures. As described by the BCBS, ''[t]he supervisory adjustment factor in the SSFA is intended to reduce cliff effects and apply conservatism for tranches with detachment points beyond [the adjusted aggregate credit risk capital requirement of the underlying exposures]. In addition, the supervisory adjustment factor can be seen to account for imprecision or uncertainty associated with using standardized approach risk weights for underlying exposures. . . .'' [79]

Question 76. Should FHFA require an Enterprise to determine the credit risk capital requirement for retained CRT exposures using a modified version of the SSFA?

Question 77. Is the SSFA properly formulated for retained CRT exposures or should other risk drivers, such as maturity, be incorporated?

Question 78. Is the SSFA (particularly the supervisory adjustment factor, *p*) appropriately calibrated for retained CRT exposures?

D. Other Exposures

While substantially all of an Enterprise's credit risk is posed by its single-family and multifamily mortgage exposures, each Enterprise does have some amount of credit risk arising from a wide variety of other exposures, including non-traditional mortgage exposures and non-mortgage exposures. Some of these non-mortgage exposures—for example, an Enterprise's OTC and cleared derivatives and repo-style transactions—raise complex and technical issues to calibrating credit risk capital requirements. FHFA believes it is important to assign a credit risk capital requirement to all material exposures, even if small in amount relative to an Enterprise's aggregate credit risk exposure. As under the 2018 proposal, FHFA proposes to incorporate into the proposed rule the extensive expertise of the U.S. and international banking regulators in calibrating credit risk capital requirements for these other exposures, with adjustments as appropriate for the Enterprises. The Basel framework has evolved over almost four decades of debate and collaboration among the world's experts in regulatory capital. That framework also has been revamped to incorporate the lessons of the 2008 financial crisis. Moreover, the complex and technical issues posed by these other exposures risk distracting FHFA from its core area of relative expertise—fashioning a mortgage risk-sensitive framework for the Enterprises—were FHFA to endeavor to develop its own framework for assigning credit risk capital requirements for these other exposures.

As discussed in this Section VIII.D, an Enterprise generally would assign risk weight for exposures other than mortgage exposures using the same risk weights assigned under the U.S. banking framework's standardized approach, in particular the Federal Reserve Board's regulatory capital requirements at subpart D of 12 CFR part 217 (Regulation Q).[80] Exposures that would be assigned risk weights under the U.S. banking framework include corporate exposures, exposures to sovereigns, OTC derivatives, cleared transactions, collateralized transactions, and off-balance sheet exposures.

Similarly, some exposures that were assigned credit risk capital requirements under the 2018 proposal would instead have a risk weight assigned under the U.S. banking framework. These would include some DTAs, municipal debt, reverse mortgage loans, reverse MBS, and cash and cash equivalents.

For any exposure that is not assigned a specific risk weight under the proposed rule, the default risk weight would be 100 percent, consistent with the U.S. banking framework.

1. Commitments and Other Off-Balance Sheet Exposures

As under the U.S. banking framework, the proposed rule would require an Enterprise to calculate the exposure amount of an off-balance sheet item by multiplying the off-balance sheet component, which is usually the notional amount, by the applicable credit conversion factor (CCF). Off-balance sheet items subject to this approach would include guarantees, mortgage commitments, contingent items, certain repo-style transactions, financial standby letters of credit, and forward agreements.

An Enterprise would apply a zero percent CCF to the unused portion of commitments that are unconditionally cancelable by the Enterprise. A commitment would be any legally binding arrangement that obligates an Enterprise to extend credit or to purchase assets.

The CCF would increase to 20 percent for a commitment with an original maturity of one year or less that is not unconditionally cancelable by the Enterprise. The CCF would increase to 50 percent for a commitment with an original maturity of more than one year that is not unconditionally cancelable by the Enterprise. An Enterprise would apply a 100 percent CCF to off-balance sheet guarantees, repurchase agreements, securities lending or borrowing transactions, financial standby letters of credit, and forward agreements.

The off-balance sheet component of a repurchase agreement would equal the sum of the current market values of all positions the Enterprise has sold subject to repurchase. The off-balance sheet component of a securities lending transaction would equal the sum of the current fair values of all positions the Enterprise has lent under the transaction. For securities borrowing transactions, the off-balance sheet component would equal the sum of the current fair values of all non-cash

[79] BCBS, *Revisions to the Basel Securisation Framework Consultative Document* at 23 (Dec. 2012; final Dec. 2014) available at *https://www.bis.org/publ/bcbs236.pdf.*

[80] The proposed rule cross-references relevant sections of 12 CFR part 217 as in effect on April 23, 2020. For the final rule, FHFA will assess whether the final rule will cross-reference sections of 12 CFR part 217 as of that same date or as of a later date, taking into account the materiality and nature of any amendments to that part after April 23, 2020 and any restrictions under applicable law.

positions the Enterprise has posted as collateral under the transaction.

2. Exposures to Sovereigns

Consistent with the U.S. banking framework, exposures to the U.S. government, its central bank, or a U.S. government agency and the portion of an exposure that is directly and unconditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency would receive a zero percent risk weight. The portion of a deposit insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) also may be assigned a zero percent risk weight. An exposure conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency would receive a 20 percent risk weight.

3. Crossholdings of Enterprise MBS

Under the 2018 proposal, an MBS guaranteed by an Enterprise would have had a credit risk capital requirement of 0 percent. Consistent with the U.S. banking framework, the proposed rule would assign a 20 percent risk weight to the exposures of an Enterprise to the other Enterprise or another GSE (other than equity exposures and acquired CRT exposures). The 20 percent risk weight would extend to an Enterprise's exposures to MBS guaranteed by the other Enterprise.

The Enterprises currently are in conservatorship and benefit from Treasury support under the PSPA. However, the Enterprises remain privately-owned corporations, and their obligations do not have the explicit guarantee of the full faith and credit of the United States. The U.S. banking regulators ''have long held the view that obligations of the GSEs should not be accorded the same treatment as obligations that carry the explicit guarantee of the U.S. government.'' [81] FHFA agrees that the MBS and other obligations of an Enterprise should be subject to a credit risk capital requirement that is greater than that assigned to those obligations that have an explicit guarantee of the full faith and credit of the United States.

Under the direction of FHFA, the Enterprises have implemented a single security initiative that is intended to increase the liquidity of the to-be-announced (TBA) market. Under the initiative, each Enterprise has begun issuing a single MBS known as the Uniform Mortgage-Backed Security (UMBS). On March 12, 2019, UMBS trading began in the forward TBA market, marking the consolidation of the formerly distinct markets for each Enterprise's MBS. In June 2019, settlement of TBA trades for UMBS began.

FHFA believes that the new, consolidated UMBS market will lead to a more efficient, resilient, and liquid secondary mortgage market and further FHFA's statutory obligation and the Enterprises' charter obligations to support the liquidity of U.S. housing finance markets. For the UMBS market to continue to work, market participants must continue to view UMBS as fungible with respect to the issuing Enterprise. That is, investors must generally agree that a UMBS of a certain coupon and maturity issued by one Enterprise is roughly equivalent to the corresponding UMBS issued by the other.[82]

To foster that fungibility, each Enterprise may issue a ''Supers'' mortgage-related security, which is a re-securitization of UMBS and certain other TBA-eligible securities, including other Supers. If an Enterprise guarantees a security backed in whole or in part by securities of the other Enterprise, the Enterprise is obligated under its guarantee to fund any shortfall in the event that the other Enterprise fails to make a payment due on its securities. The Enterprises have entered into an indemnification agreement relating to commingled securities issued by the Enterprises. The indemnification agreement obligates each Enterprise to reimburse the other for any such shortfall.

Question 79. Should FHFA adjust the regulatory capital treatment for exposures to MBS guaranteed by the other Enterprise to mitigate any risk of disruption to the UMBS?

Question 80. Should FHFA consider a different risk weight for second-level re-securitizations backed by UMBS?

Question 81. What should be the regulatory capital treatment of any credit risk mitigation effect of any indemnification or similar arrangements between the Enterprises relating to UMBS re-securitizations?

Question 82. Should FHFA adopt different risk weights for MBS guaranteed by an Enterprise and the unsecured debt of an Enterprise?

4. Corporate Exposures

Consistent with the U.S. banking framework, credit exposures to companies that are not depository institutions or securitization vehicles generally would be assigned a 100 percent risk weight. A corporate exposure is an exposure to a company that is not an exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE), a GSE, a mortgage exposure, a cleared transaction, a default fund contribution, a securitization exposure, an equity exposure, or an unsettled transaction.

5. OTC Derivative Contracts

An Enterprise would determine its credit risk capital requirement for the counterparty risk for OTC derivative contracts as if it were a banking organization subject to the Federal Reserve Board's risk-based capital requirements, in particular 12 CFR 217.34. An OTC derivative contract generally would not include a derivative contract that is a cleared transaction, which would be subject to a different approach as discussed in Section VIII.D.6.

A derivative contract is a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

To determine the risk-weighted assets for an OTC derivative contract, an Enterprise would first determine its exposure amount for the OTC derivative contract and then apply to that amount a risk weight based on the counterparty, eligible guarantor, or recognized collateral.

For a single OTC derivative contract that is not subject to a qualifying master netting agreement, the exposure amount would be the sum of (i) the current

[81] 77 FR 52888, 52896 (Aug. 30, 2012).

[82] To support investor confidence in that fungibility, FHFA promulgated a final rule governing Enterprise actions that affect UMBS cash flows to investors, issues quarterly prepayment monitoring reports, and has used its powers as the Enterprises' conservator to limit certain pooling practices with respect to the creation of UMBS. In November 2019, FHFA issued a request for input on Enterprise UMBS pooling practices.

credit exposure, which would be the greater of the mark-to-market value or zero, and (ii) the potential future exposure (PFE), which would be calculated by multiplying the notional principal amount of the OTC derivative contract by a prescribed conversion factor.

For multiple OTC derivative contracts subject to a qualifying master netting agreement, the exposure amount would be calculated by adding the net current credit exposure and the adjusted sum of the PFE amounts for all OTC derivative contracts subject to the qualifying master netting agreement. The net current credit exposure would be the greater of zero and the net sum of all positive and negative mark-to-market values of the individual OTC derivative contracts subject to the qualifying master netting agreement.

If an OTC derivative contract is collateralized by financial collateral, an Enterprise may recognize the credit risk mitigation benefits of the financial collateral pursuant to the rules governing collateralized transactions, as discussed in Section VIII.D.7.

6. Cleared Transactions

An Enterprise would determine its credit risk capital requirement for the counterparty risk for derivatives and repo-style transactions cleared through a central counterparty as if it were a banking organization subject to the Federal Reserve Board's risk-based capital requirements, in particular 12 CFR 217.35. To determine the risk-weighted assets for a cleared transaction, an Enterprise that is a clearing member client or a clearing member would multiply the trade exposure amount for the cleared transaction by the appropriate risk weight. An Enterprise also would be subject to a credit risk capital requirement for default fund contributions to CCPs.

7. Credit Risk Mitigation

An Enterprise may recognize the risk-mitigation effects of guarantees, credit derivatives, and collateral for purposes of its risk-based capital requirements in the same way a banking organization may under the Federal Reserve Board's risk-based capital requirements, in particular 12 CFR 217.36 and 217.37. Under that approach, an Enterprise generally may use the substitution approach to recognize the credit risk-mitigation effect of an eligible guarantee from an eligible guarantor or eligible credit derivative and the simple approach to recognize the effect of eligible collateral. Under the substitution approach, if the protection amount of an eligible guarantee or eligible credit derivative is greater than or equal to the exposure amount of the hedged exposure, an Enterprise generally may substitute the risk weight applicable to the guarantor or credit derivative protection provider for the risk weight assigned to the hedged exposure. Under the simple approach, the collateralized portion of the exposure generally would receive the risk weight applicable to the eligible collateral (with an exception for repo-style transactions, eligible margin loans, collateralized derivative contracts, and single-product netting sets of such transactions).

IX. Credit Risk Capital: Advanced Approach

The proposed rule would require an Enterprise to comply with the risk-based capital requirements using the higher of its risk-weighted assets calculated under the standardized approach and the advanced approach, where risk-weighted assets include credit risk, operational risk, and market risk components. The advanced approach requirements would require each Enterprise to maintain its own processes for identifying and assessing credit risk, market risk, and operational risk. These requirements should ensure that each Enterprise continues to enhance its risk management system and also that neither Enterprise simply relies on the standardized approach's lookup grids and multipliers to define credit risk tolerances, measure its credit risk, or allocate economic capital. In the course of FHFA's supervision of each Enterprise's internal models for credit risk, FHFA also could identify opportunities to update or otherwise enhance the standardized approach's lookup grids and multipliers through future rulemakings as market conditions evolve.

Under the proposed rule's advanced approach requirements, an Enterprise would be required to have a process for assessing its overall capital adequacy in relation to its risk profile and maintain infrastructure with risk measurement and management processes that are appropriate given the Enterprise's size and complexity. An Enterprise's senior management would be required to ensure that the Enterprise's internal models, operational risk quantification systems, and related advanced systems functions comply with the proposed rule's minimum requirements. The Enterprise's board of directors (or a designated committee of the board) would be required to at least annually review the effectiveness of, and approve, the Enterprise's advanced systems.

An Enterprise's advanced systems would be required to include an internal risk rating and segmentation system that differentiates among degrees of credit risk for the Enterprise's mortgage and other exposures. An Enterprise also would be required to have a process that estimates risk parameters for the Enterprise's exposures. An Enterprise's estimates of risk parameters must incorporate relevant and available data, and an Enterprise generally must demonstrate, among other things, that its estimates are representative of long run experience and take into account any changes in underwriting or recovery practices. Default, loss severity, and exposure amount data generally must include periods of economic downturn conditions. An Enterprise would be required to review—at least annually—its reference data.

An Enterprise would be required to conduct an independent validation, on an ongoing basis, of its advanced systems. The validation must include an evaluation of the conceptual soundness of the advanced systems, an ongoing monitoring process that includes verification of processes and benchmarking, and an outcomes analysis process that includes backtesting.

An Enterprise also would be required to periodically stress test its advanced systems including a consideration of how economic cycles, especially downturns, affect risk-based capital requirements.

An Enterprise would be required to meet these minimum requirements on an ongoing basis. An Enterprise also would be required to notify FHFA when the Enterprise makes any material change to its advanced systems.

In addition to the proposed rule's requirements, an Enterprise's advanced systems would be implemented under FHFA's supervisory review. As part of that review process, FHFA issues advisory bulletins to communicate its supervisory expectations to FHFA supervision staff and to the Enterprises on specific supervisory matters and topics. Through FHFA's supervision program, FHFA on-site examiners conduct supervisory activities to ensure safe and sound operations of the Enterprises. These supervisory activities may include the examination of the Enterprises to determine whether they meet the expectations set in the advisory bulletins. Examinations may also be conducted to determine whether the Enterprises comply with their own policies and procedures, regulatory and statutory requirements, or FHFA directives.

FHFA's 2013–07 Advisory Bulletin reflects supervisory expectations for an Enterprise's model risk management. The Advisory Bulletin sets minimum thresholds for model risk management and differentiates between large, complex entities and smaller, less complex entities. As the Enterprises are large complex entities, the Advisory Bulletin subjects them to heightened standards for internal audit, model risk management, model control framework, and model lifecycle management.

The proposed rule would not provide a comprehensive set of guardrails and prescriptions for an Enterprise's internal models outside of the minimum requirements discussed above and FHFA's supervision.

Question 83. Should FHFA require an Enterprise to separately determine its credit risk-weighted assets using its own internal models?

Question 84. Should there be a prudential floor on the credit risk capital requirement for a mortgage exposure determined by an Enterprise using its internal models?

Question 85. Should FHFA prescribe more specific requirements and restrictions governing the internal models and other procedures used by an Enterprise to determine its advanced credit risk-weighted assets?

Question 86. Should FHFA require an Enterprise to determine its advanced credit risk-weighted assets under subpart E of the Federal Reserve Board's Regulation Q? If so, what changes to that subpart E would be appropriate?

Question 87. Alternatively, should compliance with subpart E of the Federal Reserve Board's Regulation Q offer a safe harbor for compliance with the proposed rule's advanced approaches requirements?

Question 88. Should FHFA preserve the U.S. banking framework's scalar factor of 1.06 for determining advanced credit risk-weighted assets calculated?

Question 89. What transition period, if any, is appropriate for an Enterprise to comply with the proposed rule's requirements governing the determination of the Enterprise's advanced credit risk-weighted assets?

Question 90. What transition period would be appropriate if an Enterprise were required to determine its advanced credit risk-weighted assets under subpart E of the Federal Reserve Board's Regulation Q?

Question 91. Should there be an additional capital requirement to mitigate any model risk associated with the internal models used by an Enterprise to determine its advanced credit risk-weighted assets?

X. Market Risk Capital

The proposed rule would require an Enterprise to calculate its market risk-weighted assets for mortgage exposures and other exposures with spread risk. Single-family and multifamily loans and investments in securities held in an Enterprise's portfolio have market risk from changes in value due to movements in interest rates and credit spreads, among other things. As the Enterprises currently hedge interest rate risk at the portfolio level, and under the assumption that the Enterprises' hedging effectively manages that risk, the market risk capital requirements would be limited only to spread risk.[83]

This proposed approach is considerably different from that of the U.S. banking framework. Under the U.S. banking framework, covered banking organizations are required to measure and otherwise manage market risk and hold a commensurate amount of capital. Generally, an asset held by a covered banking organization for trading purposes is not included in the calculation of credit risk-weighted assets. Instead, the covered banking organization determines the market risk capital requirement for its trading assets using prescribed methodologies, multiplies that market risk capital requirement by 12.5 to determine the market risk-weighted assets for its covered positions, and then adds the market risk-weighted assets to its credit risk-weighted assets to determine its risk-based capital requirements. The prescribed methodologies under the U.S. banking framework determine market risk capital requirements for trading assets based on the general and specific market risk of the assets. General risk is the risk of loss in the market value of positions resulting from broad market movements (*e.g.,* changes in interest rates), while specific risk is the risk of loss in the market value of positions due to factors other than broad market movements, including event risk or default risk. Notably, the U.S. banking framework's approach to market risk capital is not limited only to spread risk, as is contemplated by the proposed rule. FHFA is seeking comment on whether to adopt a different approach, perhaps one more similar to that of the U.S. banking framework.

Exposures subject to the market risk capital requirement would include any tangible asset that has more than *de minimis* spread risk, regardless of whether the position is marked-to-market for financial statement reporting purposes and regardless of whether the position is held by the Enterprise for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits. Covered positions include:

- Any NPL, re-performing loan (RPL), reverse mortgage loan, or other mortgage exposure that, in any case, does not secure an MBS guaranteed by the Enterprise;
- Any MBS guaranteed by an Enterprise, MBS guaranteed by Ginnie Mae, reverse mortgage security, PLS, CRT exposure, or other securitization exposure; and
- Any other trading asset or trading liability, whether on- or off-balance sheet.

A. Standardized Approach

Under the standardized approach, an Enterprise would calculate market risk-weighted assets using a prescribed single point approach, a spread duration approach, or the Enterprise's internal models depending on the risk characteristics of the covered position.

1. Single Point Approach

An Enterprise would utilize the single point approach for any RPL, NPL, reverse mortgage loan, or reverse mortgage security. The primary risk for these assets generally is credit risk. The underlying borrowers may have limited refinancing opportunities due to recent or current delinquencies, and these covered positions are often relatively insensitive to prepayment risk. For these reasons, FHFA believes the spread risk profile of these covered positions would be sufficiently represented by a single point estimate.

An Enterprise would calculate the market risk-weighted assets for these covered positions as the product of the market value of the covered position, the applicable single point shock assumption for the covered position, and 12.5. The applicable single point shock assumptions would be:

- 0.0475 for an RPL or an NPL;
- 0.0160 for a reverse mortgage loan; and
- 0.0410 for a reverse mortgage security.

2. Spread Duration Approach

An Enterprise would utilize the spread duration approach for any multifamily mortgage exposure, any PLS, or any MBS guaranteed by an Enterprise or Ginnie Mae and secured

[83] FHFA's supervision of each Enterprise includes examinations of the effectiveness of the Enterprise's hedging of its interest rate risk.

by multifamily mortgage exposures due to their increased complexity relative to exposures in the single point approach category. Despite their complexity, PLS represent only a small portion of the Enterprises' portfolios, as the Enterprises' purchases of PLS have been restricted during conservatorship. Under the spread duration approach, an Enterprise would multiply the amount of the applicable spread shock by the spread duration of the covered position. Spread shock is typically based on historical spread shocks. Spread duration, or the sensitivity of the market value of an asset to changes in the spread, is often determined by using models that involve assumptions about interest rate movements and prepayment sensitivity.

An Enterprise would calculate the market risk-weighted assets for each of these covered positions as the product of the market value of the covered position, the spread duration as estimated by the Enterprise using its internal models, the applicable spread shock for the covered position, and 12.5. The applicable spread shocks would be:

- 0.0015 for a multifamily mortgage exposure that does not secure an MBS guaranteed by an Enterprise;
- 0.0265 for a PLS; and
- 0.0100 for an MBS guaranteed by an Enterprise or by Ginnie Mae and secured by multifamily mortgage exposures (other than interest-only (IO) securities guaranteed by an Enterprise or Ginnie Mae).

FHFA received a comment on the 2018 proposal suggesting the multifamily mortgage exposure spread shock of 15 basis points was too low relative to the 100 basis point spread shock prescribed for Enterprise- and Ginnie Mae-guaranteed multifamily MBS, considering that the Enterprises' MBS are pass-through securities and that historically, multifamily mortgage exposures have been less liquid than multifamily MBS. The commenter recommended that FHFA, at a minimum, equate the spread shocks.

FHFA analyzed the impact of increasing the multifamily mortgage exposure spread shock from 15 basis points to 100 basis points. In addition to a market risk capital requirement, multifamily mortgage exposures would also have a credit risk capital requirement, and in practice, perceptions of credit risk might be a component of market risk. In the proposed rule, Ginnie Mae-guaranteed MBS would not have a credit risk capital requirement, while Enterprise-guaranteed MBS would have a 20 percent risk weight for purposes of the credit risk capital requirements. FHFA determined that if the market risk capital requirement for multifamily mortgage exposures were increased through the imposition of a 100 basis point spread shock, the total risk-based capital requirement (credit risk capital plus market risk capital plus operational risk capital) for multifamily mortgage exposures would exceed, to an undesirable degree, the total risk-based capital requirement for Enterprise- and Ginnie Mae-guaranteed multifamily MBS. For this reason, FHFA is opting not to implement the commenter's recommendation.

3. Internal Models Approach

An Enterprise would utilize the internal models approach for covered positions with spread risk not covered under the single point approach or the spread duration approach. This would include an Enterprise's CMBS exposures, which in the 2018 proposal would have received a combined single-point capital requirement for credit risk and spread risk. In general, an Enterprise would use the internal models approach for covered positions with relatively higher levels of complexity or higher prepayment sensitivity.

Single-family exposures in this category would include performing loans and Enterprise- and Ginnie Mae-guaranteed single-family MBS. The spread risk profile on performing loans is relatively complex due to high prepayment sensitivity. Prepayment risk on performing loans might vary significantly across amortization terms, vintages, and mortgage rates. The high prepayment sensitivity might suggest that more simplified approaches, such as the single point approach, would not capture key risk drivers. Also, spread shocks may vary across a variety of single-family mortgage exposure characteristics. Thus, the spread duration approach, which relies on a constant spread shock, might not capture key single-family market movements. An internal models approach, however, would allow the Enterprises to differentiate spread risk across multiple risk characteristics such as amortization term, vintage, and mortgage rates. Further, the Enterprises could account for important market risk factors, such as updated spread shocks, to reflect market changes.

Similarly, the spread risk profile on Enterprise- and Ginnie Mae-guaranteed single-family MBS is relatively complex due to high prepayment sensitivity of the underlying collateral. Further, CMOs can often contain complex features and structures that alter prepayments across different tranches based on the CMO's structure. As a result, spread durations might vary significantly across mortgage products, amortization terms, vintages and mortgage rates and tranches. The use of an Enterprise's internal models to calculate market risk capital requirements would allow the Enterprise to account for important market risk factors that affect spreads and spread durations.

One commenter on the 2018 proposal recommended FHFA allow the Enterprises to utilize internal models for complex multifamily MBS in order to maintain flexibility in allowing the spread shocks to vary according to each security's features and structure, as well as underlying market conditions. FHFA determined that multifamily IO securities represent, in general, the more complex of Enterprise-guaranteed MBS. In consideration of the commenter's suggestion and in alignment with the proposed market risk capital requirement for Enterprise- and Ginnie Mae-guaranteed single-family IO securities, the proposed rule would require an Enterprise to use its internal models to calculate the market risk-weighted assets for Enterprise- and Ginnie Mae-guaranteed multifamily IO securities.

Because an Enterprise would calculate the market risk-weighted assets for these covered positions using its internal models, the Enterprise would be subject to certain model risk management requirements, as discussed in Section X.B. In addition, an Enterprise utilizing its internal models would be subject to FHFA's general regulatory oversight and supervisory review.

Question 92. Are the point and spread measures used to determine spread risk capital requirements for certain covered positions appropriately calibrated for that purpose?

Question 93. Should there be a minimum floor on the spread risk capital requirement for any covered position subject to the internal models approach?

Question 94. Should FHFA adopt an approach to market risk capital that is more similar to the Basel framework, for example by limiting the scope of the market risk capital requirements to a smaller set of positions (*e.g.,* those positions analogous to the trading book) or by requiring market risk capital for market risks other than spread risk (*e.g.,* value-at-risk, stress value-at-risk, incremental risk, etc.)? If so, what positions and activities of the Enterprises should be subject to that approach?

Question 95. Should the spread risk and other market risks for single-family and multifamily whole loans instead be set in an Enterprise-specific manner through the supervisory process, taking into account the market risk management strategies employed by the Enterprise?

Question 96. Should FHFA assume interest rate risk is fully hedged for purposes of determining market risk capital requirements?

Question 97. What requirements and restrictions should apply to the internal models used to determine standardized market risk-weighted assets?

B. Advanced Approach

An Enterprise also would calculate its advanced market risk-weighted assets using its own internal models. An Enterprise would have significant latitude in the scope and design of those internal models for measuring spread risk on its covered positions. FHFA is soliciting comment on whether to adopt a more prescriptive approach, perhaps requiring an Enterprise to determine a measure of market risk that includes a VaR-based capital requirement, a stressed VaR-based capital requirement, specific risk add-ons, incremental risk capital requirements, and comprehensive risk capital requirements, as under the U.S. banking framework.

Given the central role of the Enterprises' internal models in determining both standardized and advanced market risk capital requirements, the proposed rule includes a number of requirements and restrictions relating to the management of the related model risks. An independent risk control unit would be required to approve any internal model to calculate its risk-based capital requirement. An Enterprise must notify FHFA when the Enterprise plans to extend the use of a model to an additional business line or product type or the Enterprise makes any material change to its internal models.

The Enterprise would be required to periodically review (and at least annually) its internal models, and enhance those models as appropriate. The Enterprise also must integrate the internal models used for calculating its spread risk measure into its daily risk management process.

More generally, the sophistication of an Enterprise's internal models would have to be commensurate with the complexity and amount of its covered positions. The Enterprise's internal models must properly measure all the material risks. The Enterprise would be required to have a process for updating its internal models to ensure continued applicability and relevance.

The Enterprise also must have an independent risk control unit that reports directly to senior management. The Enterprise must have an independent validation process that includes an evaluation of the conceptual soundness of the internal models, an ongoing monitoring process that includes verification of processes and the comparison of the Enterprise's model outputs with relevant internal and external data sources or estimation techniques, and an outcomes analysis process that includes backtesting.

Question 98. Are the requirements governing an Enterprise's internal models for determining spread risk capital requirements appropriately formulated?

Question 99. Should FHFA adopt a more prescriptive approach to the determination of advanced market risk-weighted assets, perhaps requiring an Enterprise to determine a measure of market risk that includes a VaR-based capital requirement, a stressed VaR-based capital requirement, specific risk add-ons, incremental risk capital requirements, and comprehensive risk capital requirements, as under the U.S. banking framework?

C. Market Risk Management

The reliability of the internal models used in determining an Enterprise's standardized and advanced market risk-weighted assets will depend in part on the Enterprise's market risk management practices more generally. Consistent with the U.S. banking framework, the proposed rule includes a number of requirements and restrictions relating to the management of spread risk and also other market risks.

An Enterprise would be required to have a process for assessing its overall capital adequacy in relation to its market risk. An Enterprise also would be required to have policies and procedures for actively managing all covered positions. At a minimum, these policies and procedures must require, among other things, marking covered positions to market or to model on a daily basis, daily assessment of the Enterprise's ability to hedge position and portfolio risks, and establishment and daily monitoring of limits on covered positions by an independent risk control unit.

An Enterprise also would be required to have a process for valuation of its covered positions that includes policies and procedures on marking positions to market or to model, independent price verification, and valuation adjustments or reserves.

An Enterprise would be required to periodically (and at least quarterly) stress test the market risk of its covered positions. The stress tests must take into account concentration risk, illiquidity under stressed market conditions, and risks arising from the Enterprise's trading activities that may not be adequately captured in its internal models.

An Enterprise also must have an internal audit function that at least annually assesses the effectiveness of the controls supporting the Enterprise's market risk measurement systems and reports its findings to the Enterprise's board of directors (or a committee thereof).

XI. Operational Risk Capital

The proposed rule would establish an operational risk capital requirement to be calculated using the advanced measurement approach of the U.S. banking framework, but with a floor set at 15 basis points of adjusted total assets. The operational risk capital requirement would be included in an Enterprise's risk-weighted assets for the purposes of calculating risk-based capital requirements. This approach has been developed in response to comments on the 2018 proposal. Commenters on the 2018 proposal suggested that the proposed Basel basic indicators approach was insufficient because the Enterprises were too complex to justify such a simple approach and also because FHFA's implementation did not allow the requirement to vary appropriately under the basic indicators approach.

Operational risk is the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (including legal risk but excluding strategic and reputational risk). Under the proposed rule, the Enterprise's risk-based capital requirement for operational risk generally would be its operational risk exposure minus any eligible operational risk offsets. That amount would potentially be subject to adjustments if the Enterprise qualifies to use operational risk mitigants. An Enterprise's operational risk exposure would be the 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the Enterprise's operational risk quantification system over a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants).

While the advanced measurement approach is risk-sensitive, the proposed operational risk capital requirement would be subject to a floor of 15 basis points of adjusted total assets. It is important that operational risk capital does not fall below a meaningful, credible amount. Fifteen (15) basis points of adjusted total assets would represent approximately double what FHFA originally proposed in the 2018 proposal, and approximately double the amount of operational risk capital estimated internally by the Enterprises using the Basel standardized approach. FHFA believes doubling the internally estimated figure is appropriate given the estimates were calculated using historical results achieved exclusively while in conservatorship. FHFA also calibrated this floor taking into account the operational risk capital requirements of large U.S. banking organizations. Of the U.S. bank holding companies with at least $500 billion in total assets at the end of 2019, the smallest operational risk capital requirement was 0.69 percent of that U.S. banking organization's total leverage exposure.

Question 100. Is the advanced measurement approach appropriately formulated and calibrated as a measure of operational risk capital for the Enterprises?

Question 101. Should FHFA consider other approaches to calculating operational risk capital requirements (*e.g.,* the Basel standardized approach)?

Question 102. Is the minimum floor on an Enterprise's operational risk capital appropriately calibrated?

XII. Impact of the Enterprise Capital Rule

A. Enterprise-Wide

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Table 1a: Capital Requirements for Fannie Mae as of September 30, 2019

Fannie Mae

Risk-based Capital Requirements

$ in billions	Total Capital (Statutory)	CET1	Tier 1	Adjusted Total Capital
Capital Requirement	$81	$46	$61	$81
Prescribed Buffers				
Stress Capital Buffer		27	27	27
Stability Capital Buffer		37	37	37
Countercyclical Capital Buffer Amount		0	0	0
Prescribed Capital Conservation Buffer Amount (PCCBA)	0	64	64	64
Requirement and PCCBA	$81	$110	$125	$145

Leverage Capital Requirements

	Core Capital (Statutory)	Tier 1
Capital Requirement	$89	$89
Prescribed Leverage Buffer Amount (PLBA)	0	53
Requirement and PLBA	$89	$142

Table 1b: Capital Requirements for Freddie Mac as of September 30, 2019

Freddie Mac

Risk-based Capital Requirements

$ in billions	Total Capital (Statutory)	CET1	Tier 1	Adjusted Total Capital
Capital Requirement	$54	$30	$40	$54
Prescribed Buffers				
Stress Capital Buffer		19	19	19
Stability Capital Buffer		16	16	16
Countercyclical Capital Buffer Amount		0	0	0
Prescribed Capital Conservation Buffer Amount (PCCBA)		35	35	35
Requirement and PCCBA	$54	$65	$75	$89

Leverage Capital Requirements

	Core Capital (Statutory)	Tier 1
Capital Requirement	$63	$63
Prescribed Leverage Buffer Amount (PLBA)	0	38
Requirement and PLBA	$63	$101

Table 2a: Comparison of Risk-Based Capital Requirements for Fannie Mae under the 2018 Proposal and the Proposed Rule, by Risk Category

Fannie Mae	2018 Proposal As of				Proposed Rule As of		
	9/30/2017		9/30/2019		9/30/2019		
	$ in billions	% of Total	$ in billions	% of Total	$ in billions	% of Total	% of Adjusted Total Assets
Gross Credit Risk			$76.5		$90.8		2.56%
Loan-Level Credit Enhancement			(11.0)		(10.4)		(0.29%)
Net Credit Risk	$70.5		$65.4		$80.3		2.26%
CRT Impact, net	(11.5)		(19.8)		(10.5)		(0.30%)
Post-CRT Net Credit Risk	59.0	51%	45.6	53%	69.8	86%	1.97%
Market Risk	9.5	8%	6.2	7%	6.2	8%	0.18%
Going-Concern Buffer	24.0	21%	25.7	30%	0.0	0%	0.00%
Operational Risk	2.6	2%	2.7	3%	5.1	6%	0.14%
Deferred Tax Assets	19.9	17%	5.6	6%	0.0	0%	0.00%
Total Capital Requirement	$115.0	100%	$85.8	100%	$81.2	100%	2.29%
Prescribed Buffers							
Stress Capital Buffer					26.6		0.75%
Stability Capital Buffer					37.3		1.05%
Countercyclical Capital Buffer Amount					0.0		0.00%
Prescribed Capital Conservation Buffer Amount (PCCBA)					63.9		1.80%
Total Capital Requirement and PCCBA	$115.0		$85.8		$145.1		4.09%
Adjusted Total Assets	$3,357.5		$3,547.4		$3,547.4		
Total Capital Requirement and PCCBA/ Adjusted Total Assets	3.42%		2.42%		4.09%		

Table 2b: Comparison of Risk-Based Capital Requirements for Freddie Mac under the 2018 Proposal and the Proposed Rule, by Risk Category

Freddie Mac	2018 Proposal As of				Proposed Rule As of		
	9/30/2017		9/30/2019		9/30/2019		
	$ in billions	% of Total	$ in billions	% of Total	$ in billions	% of Total	% of Adjusted Total Assets
Gross Credit Risk			$50.6		$61.2		2.42%
Loan-Level Credit Enhancement			(6.9)		(6.6)		(0.26%)
Net Credit Risk	$41.5		$43.7		$54.6		2.16%
CRT Impact, net	(10.0)		(21.5)		(11.6)		(0.46%)
Post-CRT Net Credit Risk	31.5	48%	22.2	43%	43.0	80%	1.70%
Market Risk	9.9	15%	7.4	14%	7.4	14%	0.29%
Going-Concern Buffer	15.9	24%	17.8	35%	0.0	0%	0.00%
Operational Risk	1.7	3%	1.9	4%	3.6	7%	0.14%
Deferred Tax Assets	6.8	10%	1.8	4%	0.0	0%	0.00%
Total Capital Requirement	$65.9	100%	$51.1	100%	$53.9	100%	2.13%
Prescribed Buffers							
Stress Capital Buffer					18.9		0.75%
Stability Capital Buffer					16.0		0.64%
Countercyclical Capital Buffer Amount					0.0		0.00%
Prescribed Capital Conservation Buffer Amount (PCCBA)					35.0		1.39%
Total Capital Requirement and PCCBA	$65.9		$51.1		$88.9		3.52%
Adjusted Total Assets	$2,262.4		$2,524.6		$2,524.6		
Total Capital Requirement and PCCBA/ Adjusted Total Assets	2.91%		2.02%		3.52%		

Table 3a: Comparison of Risk-Based Capital Requirements for Fannie Mae under the 2018 Proposal and the Proposed Rule, by Asset Category

Fannie Mae	2018 Proposal As of				Proposed Rule As of		
	9/30/2017		9/30/2019		9/30/2019		
	$ in billions	% of Total	$ in billions	% of Total	$ in billions	% of Total	Adjusted Total
Single-family excluding Going-Concern Buffer	$58.6	51%	$41.6	48%			
Single-family Going-Concern Buffer	21.5	19%	22.4	26%			
Single-family	80.1	70%	64.0	75%	$66.5	82%	1.88%
Multifamily excluding Going-Concern Buffer	7.4	6%	9.1	11%			
Multifamily Going-Concern Buffer	2.0	2%	2.5	3%			
Multifamily	9.4	8%	11.6	13%	10.7	13%	0.30%
Deferred Tax Assets	19.9	17%	5.6	6%	0.0	0%	0.00%
Other Assets excluding Going-Concern Buffer*	5.1	4%	3.9	5%			
Other Assets Going-Concern Buffer	0.5	0%	0.8	1%			
Other Assets	5.6	5%	4.7	5%	4.0	5%	0.11%
Total Capital Requirement	$115.0	100%	$85.8	100%	$81.2	100%	2.29%
Prescribed Buffers							
Stress Capital Buffer					26.6		0.75%
Stability Capital Buffer					37.3		1.05%
Countercyclical Capital Buffer Amount					0.0		0.00%
Prescribed Capital Conservation Buffer Amount (PCCBA)					$63.9		1.80%
Total Capital Requirement and PCCBA	$115.0		$85.8		$145.1		4.09%
Adjusted Total Assets	$3,357.5		$3,547.4		$3,547.4		
Total Capital Requirement and Buffers/ Adjusted Total Assets	3.43%		2.42%		4.09%		

*Includes PLS, CMBS, Other.

Table 3b: Comparison of Risk-Based Capital Requirements for Freddie Mac under the 2018 Proposal and the Proposed Rule, by Asset Category

Freddie Mac	2018 Proposal As of				Proposed Rule As of		
	9/30/2017		9/30/2019		9/30/2019		
	$ in billions	% of Total	$ in billions	% of Total	$ in billions	% of Total	% of Adjusted Total Assets
Single-family excluding Going-Concern Buffer	$37.0	56%	$26.2	51%			
Single-family Going-Concern Buffer	13.4	20%	14.5	28%			
Single-family	50.4	77%	40.7	80%	$44.5	83%	1.76%
Multifamily excluding Going-Concern Buffer	2.8	4%	3.1	6%			
Multifamily Going-Concern Buffer	1.7	3%	2.2	4%			
Multifamily	4.5	7%	5.3	10%	7.1	13%	0.28%
Deferred Tax Assets	6.8	10%	1.8	4%	0.0	0%	0.00%
Other Assets excluding Going-Concern Buffer*	3.3	5%	2.2	4%			
Other Assets Going-Concern Buffer	0.8	1%	1.0	2%			
Other Assets	4.1	6%	3.3	6%	2.3	4%	0.09%
Total Capital Requirement	$65.9	100%	$51.1	100%	$53.9	100%	2.13%
Prescribed Buffers							
Stress Capital Buffer					18.9		0.75%
Stability Capital Buffer					16.0		0.64%
Countercyclical Capital Buffer Amount					0.0		0.00%
Prescribed Capital Conservation Buffer Amount (PCCBA)					$35.0		1.39%
Total Capital Requirement and PCCBA	$65.9		$51.1		$88.9		3.52%
Adjusted Total Assets	$2,262.4		$2,524.6		$2,524.6		
Total Capital Requirement and Buffers/ Adjusted Total Assets	2.91%		2.02%		3.52%		

*Includes PLS, CMBS, Other.

B. Single-Family Business

Table 26: Comparison of Single-family Risk-based Capital Requirements under the 2018 Proposal and the Proposed Rule, as of September 30, 2019

$ in billions	Fannie Mae		Freddie Mac		Enterprises Combined			
	2018 Proposal	Proposed Rule	2018 Proposal	Proposed Rule	2018 Proposal	Risk Weight	Proposed Rule	Risk Weight
Gross Credit Risk	$61.8	$75.1	$38.0	$47.4	$99.9	25%	$122.4	31%
Loan Level Enchancement	(11.0)	(10.4)	(6.9)	(6.6)	(17.9)		(17.0)	
Net Credit Risk	50.8	64.6	31.2	40.8	82.0	20%	105.4	26%
CRT Impact, net	(15.2)	(6.2)	(12.0)	(4.7)	(27.2)		(10.9)	
Post-CRT Net Credit Risk	35.6	58.4	19.1	36.1	54.7	14%	94.5	24%
Market Risk	3.6	3.6	5.5	5.5	9.1		9.1	
Operational Risk	2.4	4.5	1.5	2.9	3.9		7.4	
Subtotal	41.6	66.5	26.2	44.5	67.8		111.0	
Going-concern Buffer	22.4	0.0	14.5	0.0	36.9		0.0	
Total Capital Requirement	$64.0	$66.5	$40.7	$44.5	$104.7		$111.0	
Total UPB	$2,944.9	$2,944.9	$2,058.8	$2,058.8	$5,003.8		$5,003.8	

Includes single-family whole loans, Fannie Mae and Freddie Mac guarantees of single-family securities held by third parties, and investments in single-family securities guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

Table 27: Walk-forward of Single-family Risk-based Capital Requirements from the 2018 proposal to the Proposed Rule, as of September 30, 2019

$ in billions	Fannie Mae		Freddie Mac		Enterprises Combined	
	2018 Proposal	Proposed Rule	2018 Proposal	Proposed Rule	2018 Proposal	Proposed Rule
Gross Credit Risk	$61.8		$38.0		$99.9	
Consolidate Grids, drop 2 SF multipliers		(0.5)		(0.0)		(0.6)
20% RW on cross holding/wrap of MBS		0.5		0.4		0.9
Counterparty credit risk for derivatives		0.1		0.3		0.4
Loan level capital floor		13.2		8.6		21.9
Gross Credit Risk - New Proposal		75.1		47.4		122.4
Loan Level Credit Enhancement	(11.0)		(6.9)		(17.9)	
Reduce MI Haircuts		(0.4)		(0.3)		(0.7)
Loan level capital floor		1.0		0.6		1.6
Loan Level Enhancement - New Proposal		(10.4)		(6.6)		(17.0)
Net Credit Risk	50.8	64.6	31.2	40.8	82.0	105.4
CRT - Original Proposal	(15.2)		(12.0)		(27.2)	
10% haircut on CRT capital relief		1.6		1.3		2.8
CRT tranche capital floor and all other changes		7.4		6.0		13.5
CRT Impact, net - New Proposal		(6.2)		(4.7)		(10.9)
Post-CRT Net Credit Risk	35.6	58.4	19.1	36.1	54.7	94.5
Market Risk	3.6	3.6	5.5	5.5	9.1	9.1
Operational Risk	2.4		1.5		3.9	
Operational Risk floor		2.1		1.4		3.4
Operational Risk - New Proposal		4.5		2.9		7.4
Going-concern buffer	22.4	0.0	14.5	0.0	36.9	0.0
Total Capital Requirement	$64.0	$66.5	$40.7	$44.5	$104.7	$111.0

Includes single-family whole loans, Fannie Mae and Freddie Mac guarantees of single-family securities held by third parties, and investments in single-family securities guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

Table 28: Credit Risk Capital Requirements for Single-family Mortgage Exposures, as of September 30, 2019

	Enterprises Combined				
	Capital, $billions	RWA, $billions	Risk Weight	UPB, $billions	Capital, bps
Gross Credit Risk					
Performing Loans	$104.7	$1,309	28%	$4,661.6	225
Re-Performing Loans	8.5	106.8	55%	195.4	437
Non-Performing Loans	5.6	70.3	166%	42.4	1,326
Gross Credit Risk	$118.9	$1,486.1	30%	$4,899.4	243
Net Credit Risk					
Performing Loans	$89.3	$1,116	24%	$4,661.6	192
Re-Performing Loans	7.9	99.2	51%	195.4	406
Non-Performing Loans	4.7	58.3	138%	42.4	1,101
Net Credit Risk	$101.9	$1,273.7	26%	$4,899.4	208
CRT Impact, net	(10.9)				
Post CRT Net Credit Risk	$91.0	$1,136.9	23%	$4,899.4	

Includes single-family whole loans and Fannie Mae and Freddie Mac guarantees of single-family securities held by third parties.

Table 28a: Credit Risk Capital Requirements for Fannie Mae's Single-family Mortgage Exposures, as of September 30, 2019

	Fannie Mae				
	Capital, $billions	RWA, $billions	Risk Weight	UPB, $billions	Capital, bps
Gross Credit Risk					
Performing Loans	$64.2	$803	29%	$2,813.7	228
Re-Performing Loans	5.7	$71	55%	130.0	439
Non-Performing Loans	3.6	$45	169%	26.8	1,352
Gross Credit Risk	73.6	$919	31%	$2,970.4	248
Net Credit Risk					
Performing Loans	$54.6	$683	24%	$2,813.7	194
Re-Performing Loans	5.3	$66	51%	130.0	408
Non-Performing Loans	3.2	$40	149%	26.8	1,192
Net Credit Risk	63.1	$789	27%	2,970.4	213
CRT Impact, net	(6.2)				
Post CRT Net Credit Risk	$56.9	$711	24%	$2,970.4	

Includes single-family whole loans and Fannie Mae guarantees of single-family securities held by third parties.

Table 28b: Credit Risk Capital Requirements for Freddie Mac's Single-family Mortgage Exposures, as of September 30, 2019

	Freddie Mac				
	Capital, $billions	RWA, $billions	Risk Weight	UPB, $billions	Capital, bps
Gross Credit Risk					
Performing Loans	$40.5	$506	27%	$1,847.9	219
Re-Performing Loans	2.8	$35	54%	65.5	433
Non-Performing Loans	2.0	$25	160%	15.6	1,283
Gross Credit Risk	45.3	$567	29%	$1,928.9	235
Net Credit Risk					
Performing Loans	$34.7	$433	23%	$1,847.9	188
Re-Performing Loans	2.6	$33	50%	65.5	401
Non-Performing Loans	1.5	$18	118%	15.6	944
Net Credit Risk	38.8	$485	25%	1,928.9	201
CRT Impact, net	(4.7)				
Post CRT Net Credit Risk	$34.0	$426	22%	$1,928.9	

Includes single-family whole loans and Freddie Mac guarantees of single-family securities held by third parties.

C. Multifamily Business

Table 29: Comparison of Multifamily Risk-based Capital Requirements under the 2018 Proposal and the Proposed Rule, of September 30, 2019

$ in billions	Fannie Mae		Freddie Mac		Enterprises Combined			
	2018 Proposal	Proposed Rule	2018 Proposal	Proposed Rule	2018 Proposal	Risk Weight	Proposed Rule	Risk Weight
Net Credit Risk	$12.8	$13.9	$11.8	$13.1	$24.7	47%	$27.0	51%
CRT Impact, net	(4.6)	(4.3)	(9.5)	(6.9)	(14.1)		(11.2)	
Post-CRT Net Credit Risk	8.2	9.6	2.4	6.2	10.6	20%	15.8	30%
Market Risk	0.6	0.6	0.5	0.5	1.1		1.1	
Operational Risk	0.3	0.5	0.2	0.4	0.5		0.9	
Subtotal	9.1	10.7	3.1	7.1	12.2		17.8	
Going-Concern Buffer	2.5	0.0	2.2	0.0	4.7		0.0	
Total Capital Requirement	$11.6	$10.7	$5.3	$7.1	$16.9		$17.8	
Total UPB	$352.3	$352.3	$303.2	$303.2	$655.5		$655.5	

Includes multifamily whole loans, Fannie Mae and Freddie Mac guarantees of multifamily securities held by third parties, and investments in multifamily securities guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

Table 30: Walk-forward of Multifamily Risk-based Capital Requirements from the 2018 Proposal to Proposed Rule, as of September 30, 2019

$ in billions	Fannie Mae		Freddie Mac		Enterprises Combined	
	2018 Proposal	Proposed Rule	2018 Proposal	Proposed Rule	2018 Proposal	Proposed Rule
Net Credit Risk	$12.8		$11.8		$24.7	
Eliminate Govt. Subsidy Multiplier and Adjust the Orig Loan Size Multipliers		0.9		0.7		1.6
Loan-level capital floor		0.2		0.6		0.8
Net Credit Risk - New Proposal		13.9		13.1		27.0
CRT - Original Proposal	(4.6)		(9.5)		(14.1)	
Change in capital relief associated with pre-deal capital		(0.3)		(0.6)		(0.9)
Loan-level Risk Sharing Capital Relief		0.1		0.0		0.1
10% haircut on CRT capital relief		0.5		1.0		1.5
CRT tranche capital floor and all other changes		0.02		2.14		2.2
CRT Impact, net - New Proposal		(4.3)		(6.9)		(11.2)
Post-CRT Net Credit Risk - New Proposal	8.2	9.6	2.4	6.2	10.6	15.8
Market Risk	0.6	0.6	0.5	0.5	1.1	1.1
Operational Risk	0.3		0.2		0.5	
Operational Risk floor		0.2		0.2		0.4
Operational Risk - New Proposal		0.5		0.4		0.9
Going-Concern Buffer	2.5	0.0	2.2	0.0	4.7	0.0
Total Capital Requirement	$11.6	$10.7	$5.3	$7.1	$16.9	$17.8

Includes multifamily whole loans, Fannie Mae and Freddie Mac guarantees of multifamily securities held by third parties, and investments in multifamily securities guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

D. Other Assets

Table 31: Risk-based Capital Requirements for Other Assets, of September 30, 2019

	Fannie Mae			Freddie Mac			Enterprises Combined		
	Capital, $billions	UPB, $billions	Capital, bps	Capital, $billions	UPB, $billions	Capital, bps	Capital, $billions	UPB, $billions	Capital, bps
Other Assets									
Private-label Securities	$0.7	$2.4	2,753	$0.4	$1.7	2,430	$1.1	$4.1	2,619
CMBS	0.0	$0.0	-	0.0	$0.2	202	$0.0	$0.2	202
Other	3.3	$180.3	183	1.9	$122.1	154	$5.2	$302.4	172
Total Capital Requirements	$4.0	$182.7	217	$2.3	$124.0	186	$6.3	$306.7	204

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XIII. Comparisons to the U.S. Banking Framework

As discussed in Section V.B.2 and also in the 2018 proposal, comparisons to the U.S. banking framework's capital requirements are complicated by the different risk profiles of the Enterprises and large banking organizations.[84] The Enterprises, for example, transfer much of the interest rate and funding risk on their mortgage exposures through their sales of guaranteed MBS, while banking organizations generally fund themselves through customer deposits and other sources. On the other hand, the monoline nature of the Enterprises' mortgage-focused businesses suggests that the concentration risk profile of an Enterprise is generally greater than that of a diversified banking organization

[84] 83 FR at 33323.

with a similar amount of mortgage credit risk.

While the Enterprises and large banking organizations' risk profiles are different with respect to some risks, those differences should not preclude a comparison of the credit risk capital requirement of a large U.S. banking organization for a specific mortgage exposure to the credit risk capital requirement of an Enterprise for a similar mortgage exposure. Under both frameworks, the credit risk capital requirements for mortgage exposures are calibrated to absorb unexpected losses. Comparisons of credit risk capital requirements of the large U.S. banking organizations to credit risk capital requirements of the Enterprises under the proposed rule are, however, still complicated by the fact that the proposed rule's requirements could be very different depending on the economic environment. In a favorable economic environment, particularly after sustained periods of house price growth and strong employment such as experienced in the U.S. prior to the first quarter of 2020, the proposed rule's mortgage risk-sensitive framework is likely to show lower credit risk capital requirements than the U.S. banking framework. Conversely, in a period of financial stress, the proposed rule's mortgage risk-sensitive framework could show higher credit risk capital requirements than the U.S. banking framework.

FHFA's mortgage risk-sensitive framework results in a more granular calibration of credit risk capital requirements for mortgage exposures, and some meaningful portion of the current gap between the credit risk capital requirements of the Enterprises and large banking organizations under the proposed rule is due to the proposed rule's use of MTMLTV instead of OLTV, as under the U.S. banking framework, to assign credit risk capital requirements. Adjusting for the appreciation in the value of the underlying real property generally has led to lower actual credit risk capital requirements at the Enterprises, and some of the gap between the credit risk capital requirements of the Enterprises and large U.S. banking organizations might be expected to narrow were real property prices to move toward their long-term trend.

With that context, FHFA is seeking comment on the appropriateness of key differences between the credit risk capital requirements for mortgage exposures under the proposed rule and the U.S. banking framework.

• *Risk-based credit risk capital requirements.* As discussed in Sections VIII.A.7 and VIII.B.6, as of September 30, 2019 and before adjusting for CRT or the buffers under both frameworks, the average credit risk capital requirements for the Enterprises' single-family and multifamily mortgage exposures generally were roughly half those of similar exposures under the U.S. banking framework. Those lower average credit risk capital requirements are before any capital relief afforded through CRT.

• *CRT capital treatment.* As discussed in Sections VIII.C.3.c and VIII.C.3.d, the proposed rule solicits comments on two different approaches to determining the remaining credit risk on exposures of a CRT that are retained by the Enterprise and any credit risk in effect retained by the Enterprise as a result of the potential ineffectiveness of CRT in transferring credit risk. Under both approaches, the minimum risk weight assigned to retained CRT exposures would be 10 percent, which is less than the 20 percent risk weight floor for securitization exposures under the U.S. banking framework.

• *CRT eligibility.* As discussed in Section VIII.C.3.b, the proposed rule provides credit risk capital relief for a number of CRT structures that would not be eligible for capital relief under the U.S. banking framework. The proposed rule also generally subjects CRT structures to less restrictive operational criteria.

• *Mortgage insurance.* Similarly, as discussed in Section VIII.A.6, the proposed rule generally provides more credit risk capital relief for mortgage insurance and other loan-level credit enhancement, and for a broader range of counterparties, than the U.S. banking framework.

In addition to these different credit risk capital requirements for mortgage exposures, FHFA is seeking comment on other aspects in which the proposed rule and the U.S. banking framework differs. For example:

• *Leverage ratio requirements.* Under the proposed rule's leverage ratio requirement, an Enterprise would be required to maintain tier 1 capital in excess of 2.5 percent of its adjusted total assets. An Enterprise also would be required to maintain tier 1 capital in excess of 4.0 percent of its adjusted total assets to avoid restrictions on capital distributions and discretionary bonus payments. A U.S. banking organization is required to maintain tier 1 capital greater than 4.0 percent of its total assets. A large U.S. banking organization also must maintain tier 1 capital in excess of 5.0 percent of its total leverage exposure to avoid restrictions on capital distributions and discretionary bonus payments.[85]

• *Market risk capital.* The proposed rule and U.S. banking framework take considerably different approaches to market risk capital requirements. As discussed in Section X, the proposed rule generally assigns market risk capital requirements to a broader set of exposures, including ones already subject to credit risk capital requirements, while the U.S. banking framework requires market risk capital not just for spread risk but also a broader range of market risks.

• *Capital conservation buffer.* As discussed in Section VII.A, the proposed rule's PCCBA is assessed against adjusted total assets, not risk-weighted assets. This risk-insensitive approach reduces the impact that the PCCBA potentially could have on higher risk exposures, avoids amplifying the secondary effects of any model or similar risks inherent to the calibration of granular risk weights for mortgage exposures, and further mitigates the pro-cyclicality in aggregate risk-based capital requirements.

• *Stability capital buffer.* The proposed rule's stability capital buffer is tailored to the risk that an Enterprise's default or other financial distress could have on the liquidity, efficiency, competitiveness, and resiliency of national housing finance markets. The U.S. banking framework's GSIB surcharge is tailored to equalize the expected impact on the stability of the financial system of the failure of a GSIB with the expected systemic impact of the failure of a large bank holding company that is not a GSIB. Because the stability capital buffer is a component of the capital conservation buffer, the stability capital buffer is assessed against an Enterprise's adjusted total assets, while the GSIB surcharge is more risk-sensitive in that it is assessed against risk-weighted assets.

• *Internal-ratings approach.* Like the U.S. banking framework, each Enterprise would be required to determine its risk-weighted assets under two approaches—a standardized approach and an advanced approach—with the greater of the two risk-weighted assets used to determine its risk-based capital requirements. Unlike the U.S. banking framework, the proposed rule would be significantly less prescriptive as to requirements and restrictions governing the internal models used to

[85] Insured depository institutions subsidiaries of certain large U.S. bank holding companies must maintain tier 1 capital of 6.0 percent or greater of total assets to be "well capitalized." *See, e.g.,* 12 CFR 6.4(b)(1)(i)(D).

determine the advanced risk-weighted assets.

Question 103. Are the differences between the credit risk capital requirements for mortgage exposures under the proposed rule and the U.S. banking framework appropriate?

Question 104. Which, if any, aspects of the proposed rule should be further aligned with the U.S. banking framework?

XIV. Compliance Period

This proposed rule would establish a post-conservatorship regulatory capital framework that ensures that each Enterprise operates in a safe and sound manner and is positioned to fulfill its statutory mission to provide stability and ongoing assistance to the secondary mortgage market across the economic cycle. Given the Enterprises' current conservatorship status and capitalization, certain sections and subparts of the proposed rule would be subject to delayed compliance dates as set forth in § 1240.4. The capital requirements and buffers set out in subpart B of the proposed rule would have a delayed compliance date, unless adjusted by FHFA as described below, of the later of one year from publication of the final rule or the date of the termination of conservatorship. FHFA recognizes that the path for transition out of conservatorship and meeting the full capital requirements and buffers is not settled at this time. Therefore, the proposed rule would provide FHFA with the discretion, based on FHFA's assessment of capital market conditions and the likely feasibility of an Enterprise to achieve capital levels sufficient to comply with the capital requirements proposed at § 1240.10, to defer compliance with the capital requirements and thereby not subject an Enterprise to statutory prohibitions on capital distributions that would apply if those requirements were not met. During that deferral period, the PCCBA would be the CET1 capital that would otherwise be required under § 1240.10 plus the PCCBA that would otherwise apply under normal conditions under § 1240.11(a)(5); and the PLBA would be 4.0 percent of the adjusted total assets of the Enterprise. To benefit from the deferral period, an Enterprise would be required to comply with any corrective plan or agreement or order that sets out the actions by which an Enterprise will achieve compliance with the capital requirements by a specified date.

In addition, the proposed rule would delay compliance for reporting under § 1240.1(f) for one year from the date of publication of the final rule.

Question 105. Are the delayed compliance dates tailored in a manner to promote the ability of an Enterprise to achieve compliant regulatory capital levels?

XV. Temporary Increases of Minimum Capital Requirements and Other Conforming Amendments

To reinforce its reserved authorities under § 1240.1(d), FHFA is proposing to amend its existing rule, 12 CFR part 1225, ''Minimum Capital—Temporary Increase,'' to clarify that the authority implemented in that rule to temporarily increase a regulated entity's required capital minimums applies to risk-based minimum capital levels as well as to minimum leverage ratios. This amendment aligns the scope of this regulation, adopted under 12 U.S.C. 4612(d), with the FHFA Director's authority under 12 U.S.C. 4612(e) to establish additional capital and reserve requirements for particular purposes, which authorizes risk-based adjustments to capital requirements for particular products and activities and is not limited to adjustments to the leverage ratio. FHFA is also proposing to amend the definition of ''total exposure'' in § 1206.2 to have the same meaning as ''adjusted total assets'' as defined in § 1240.2. FHFA is also proposing to remove 12 CFR part 1750.

Question 106. Should FHFA conform the definition of ''total exposure'' in § 1206.2 to have the same meaning as ''adjusted total assets'' as defined in § 1240.2?

Question 107. In addition to the questions asked above, FHFA requests comments on any aspect of the proposed rule.

XVI. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The proposed rule contains no such collection of information requiring OMB approval under the PRA. Therefore, no information has been submitted to OMB for review.

XVII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, would not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1206

Assessments, Federal home loan banks, Government-sponsored enterprises, Reporting and recordkeeping requirements.

12 CFR Part 1225

Federal home loan banks, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Capital, Filings, Minimum capital, Procedures, Standards.

12 CFR Part 1240

Capital, Credit, Enterprise, Investments, Reporting and recordkeeping requirements.

12 CFR Part 1750

Banks, banking, Capital classification, Mortgages, Organization and functions (Government agencies), Risk-based capital, Securities.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4513b, 4514, 4515–17, 4526, 4611–4612, 4631–36, FHFA proposes to amend chapters XII and XVII, of title 12 of the Code of Federal Regulation as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

PART 1206—ASSESSMENTS

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 12 U.S.C. 4516.

■ 2. Amend 12 CFR 1206.2 by revising the definition of ''*Total exposure*'' to read as follows:

§ 1206.2 Definitions.

* * * * *

Total exposure has the same meaning given to adjusted total assets in 12 CFR 1240.2.

* * * * *

SUBCHAPTER B—ENTITY REGULATIONS

PART 1225—MINIMUM CAPITAL—TEMPORARY INCREASE

■ 3. The authority citation for part 1225 continues to read as follows:

Authority: 12 U.S.C. 4513, 4526 and 4612.

■ 4. Amend 12 CFR 1225.2 by revising the definition of ''*Minimum capital level*'' to read as follows:

§ 1225.2 Definitions.

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Minimum capital level means the lowest amount of capital meeting any regulation or orders issued pursuant to 12 U.S.C. 1426 and 12 U.S.C. 4612, or any similar requirement established by regulation, order or other action.

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SUBCHAPTER C—ENTERPRISES

■ 5. Add part 1240 to subchapter C to read as follows:

PART 1240—CAPITAL ADEQUACY OF ENTERPRISES

Authority: 12 U.S.C. 4511, 4513, 4513b, 4514, 4515, 4517, 4526, 4611–4612, 4631–36.

Subpart A—General Provisions

§ 1240.1 Purpose, applicability, reservations of authority, and reporting.

(a) *Purpose.* This part establishes capital requirements and overall capital adequacy standards for the Enterprises. This part includes methodologies for calculating capital requirements.

(b) *Authorities*—(1) *Limitations of authority.* Nothing in this part shall be read to limit the authority of FHFA to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation under the Safety and Soundness Act, and including action under sections 1313(a)(2), 1365–1367, 1371–1376 (12 U.S.C. 4513(a)(2), 4615–4617, and 4631–4636).

(2) *Permissible activities.* Nothing in this part may be construed to authorize, permit, or require an Enterprise to engage in any activity not authorized by its authorizing statute or that would otherwise be inconsistent with its authorizing statute or the Safety and Soundness Act.

(c) *Applicability*—(1) *Covered regulated entities.* This part applies on a consolidated basis to each Enterprise.

(2) *Capital requirements and overall capital adequacy standards.* Each Enterprise must calculate its capital requirements and meet the overall capital adequacy standards in subpart B of this part.

(3) *Regulatory capital.* Each Enterprise must calculate its regulatory capital in accordance with subpart C of this part.

(4) *Risk-weighted assets.* (i) Each Enterprise must use the methodologies in subparts D and F of this part to calculate standardized total risk-weighted assets.

(ii) Each Enterprise must use the methodologies in subpart E and subpart F of this part to calculate advanced approaches total risk-weighted assets.

(d) *Reservation of authority regarding capital.* Subject to applicable provisions of the Safety and Soundness Act—

(1) *Additional capital in the aggregate.* FHFA may require an Enterprise to hold an amount of regulatory capital greater than otherwise required under this part if FHFA determines that the Enterprise's capital requirements under this part are not commensurate with the Enterprise's credit, market, operational, or other risks.

(2) *Regulatory capital elements.* (i) If FHFA determines that a particular common equity tier 1 capital, additional tier 1 capital, or tier 2 capital element has characteristics or terms that diminish its ability to absorb losses, or otherwise present safety and soundness concerns, FHFA may require the Enterprise to exclude all or a portion of such element from common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, as appropriate.

(ii) Notwithstanding the criteria for regulatory capital instruments set forth in subpart C of this part, FHFA may find that a capital element may be included in an Enterprise's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital on a permanent or temporary basis consistent with the loss absorption capacity of the element and in accordance with § 1240.20(e).

(3) *Risk-weighted asset amounts.* If FHFA determines that the risk-weighted asset amount calculated under this part by the Enterprise for one or more exposures is not commensurate with the risks associated with those exposures, FHFA may require the Enterprise to assign a different risk-weighted asset amount to the exposure(s) or to deduct

the amount of the exposure(s) from its regulatory capital.

(4) *Total leverage.* If FHFA determines that the adjusted total asset amount calculated by an Enterprise under § 1240.10 is inappropriate for the exposure(s) or the circumstances of the Enterprise, FHFA may require the Enterprise to adjust this exposure amount in the numerator and the denominator for purposes of the leverage ratio calculations.

(5) *Consolidation of certain exposures.* FHFA may determine that the risk-based capital treatment for an exposure or the treatment provided to an entity that is not consolidated on the Enterprise's balance sheet is not commensurate with the risk of the exposure and the relationship of the Enterprise to the entity. Upon making this determination, FHFA may require the Enterprise to treat the exposure or entity as if it were consolidated on the balance sheet of the Enterprise for purposes of determining the Enterprise's risk-based capital requirements and calculating the Enterprise's risk-based capital ratios accordingly. FHFA will look to the substance of, and risk associated with, the transaction, as well as other relevant factors FHFA deems appropriate in determining whether to require such treatment.

(6) *Other reservation of authority.* With respect to any deduction or limitation required under this part, FHFA may require a different deduction or limitation, provided that such alternative deduction or limitation is commensurate with the Enterprise's risk and consistent with safety and soundness.

(e) *Corrective action and enforcement.* FHFA may enforce this part pursuant to sections 1371, 1372, and 1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, 4636) and also may enforce the total capital requirement established under § 1240.10(a) and the core capital requirement established under § 1240.10(e) pursuant to section 1364 of the Safety and Soundness Act (12 U.S.C. 4614). This part is also a prudential standard adopted under section 1313b of the Safety and Soundness Act (12 U.S.C. 4513b), excluding § 1240.11, which is a prudential standard only for purposes of § 1240.4(d). That section authorizes the Director to require that an Enterprise submit a corrective plan under 12 CFR 1236.4 specifying the actions the Enterprise will take to correct the deficiency if the Director determines that an Enterprise is not in compliance with this part.

(f) *Reporting procedure and timing*—(1) *Capital Reports.* Each Enterprise shall file a capital report with FHFA every calendar quarter providing the information and data required by FHFA. The specifics of required information and data, and the report format, will be separately provided to the Enterprise by FHFA. The report shall include the ratio of capital requirement under § 1240.10 to the adjusted total assets of the Enterprise and the maximum payout ratio of the Enterprise.

(2) *Timing.* The capital report shall be submitted not later than 60 days after calendar quarter end or at such other time as the Director requires.

(3) *Approval.* The capital report must be approved by the Chief Risk Officer and the Chief Financial Officer of an Enterprise prior to submission to FHFA.

(4) *Adjustment.* In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which information was provided pursuant to this paragraph (f), which would cause an adjustment to a capital report, an Enterprise must file with the Director an amended capital report not later than 15 days after the date of such adjustment.

§ 1240.2 Definitions.

As used in this part:

12 CFR 217 means the regulation published at 12 CFR part 217 as of April 23, 2020.

Acquired CRT exposure means, with respect to an Enterprise:

(1) Any exposure that arises from a credit risk transfer of the Enterprise and has been acquired by the Enterprise since the issuance or entry into the credit risk transfer by the Enterprise; or

(2) Any exposure that arises from a credit risk transfer of the other Enterprise.

Additional tier 1 capital is defined in § 1240.20(c).

Adjusted allowances for credit losses (AACL) means valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost and a lessor's net investment in leases that have been established to reduce the amortized cost basis of the assets to amounts expected to be collected as determined in accordance with GAAP. For purposes of this part, adjusted allowances for credit losses include allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance as determined in accordance with GAAP. Adjusted allowances for credit losses allowances created that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities.

Adjusted total assets means the sum of the items described in paragraphs (1) though (9) of this definition, as adjusted pursuant to paragraph (9) for a clearing member Enterprise:

(1) The balance sheet carrying value of all of the Enterprise's on-balance sheet assets, plus the value of securities sold under a repurchase transaction or a securities lending transaction that qualifies for sales treatment under GAAP, less amounts deducted from tier 1 capital under § 1240.22(a), (c), and (d), and less the value of securities received in security-for-security repo-style transactions, where the Enterprise acts as a securities lender and includes the securities received in its on-balance sheet assets but has not sold or re-hypothecated the securities received, and less the fair value of any derivative contracts;

(2) The potential future credit exposure (PFE) for each derivative contract or each single-product netting set of derivative contracts (including a cleared transaction except as provided in paragraph (9) of this definition and, at the discretion of the Enterprise, excluding a forward agreement treated as a derivative contract that is part of a repurchase or reverse repurchase or a securities borrowing or lending transaction that qualifies for sales treatment under GAAP), to which the Enterprise is a counterparty as determined under 12 CFR 217.34, but without regard to 12 CFR 217.34(b), provided that:

(i) An Enterprise may choose to exclude the PFE of all credit derivatives or other similar instruments through which it provides credit protection when calculating the PFE under 12 CFR 217.34, but without regard to 12 CFR 217.34(b), provided that it does not adjust the net-to-gross ratio (NGR); and

(ii) An Enterprise that chooses to exclude the PFE of credit derivatives or other similar instruments through which it provides credit protection pursuant to paragraph (2)(i) of this definition must do so consistently over time for the calculation of the PFE for all such instruments;

(3) The amount of cash collateral that is received from a counterparty to a derivative contract and that has offset the mark-to-fair value of the derivative asset, or cash collateral that is posted to a counterparty to a derivative contract and that has reduced the Enterprise's on-balance sheet assets, unless such cash collateral is all or part of variation margin that satisfies the following requirements:

(i) The variation margin is used to reduce the current credit exposure of the derivative contract, calculated as described in 12 CFR 217.34(b) and not the PFE; and

(ii) For derivative contracts that are not cleared through a QCCP, the cash collateral received by the recipient counterparty is not segregated (by law, regulation, or an agreement with the counterparty);

(iii) Variation margin is calculated and transferred on a daily basis based on the mark-to-fair value of the derivative contract;

(iv) The variation margin transferred under the derivative contract or the governing rules of the CCP or QCCP for a cleared transaction is the full amount that is necessary to fully extinguish the net current credit exposure to the counterparty of the derivative contracts, subject to the threshold and minimum transfer amounts applicable to the counterparty under the terms of the derivative contract or the governing rules for a cleared transaction;

(v) The variation margin is in the form of cash in the same currency as the currency of settlement set forth in the derivative contract, provided that for the purposes of this paragraph, currency of settlement means any currency for settlement specified in the governing qualifying master netting agreement and the credit support annex to the qualifying master netting agreement, or in the governing rules for a cleared transaction; and

(vi) The derivative contract and the variation margin are governed by a qualifying master netting agreement between the legal entities that are the counterparties to the derivative contract or by the governing rules for a cleared transaction, and the qualifying master netting agreement or the governing rules for a cleared transaction must explicitly stipulate that the counterparties agree to settle any payment obligations on a net basis, taking into account any variation margin received or provided under the contract if a credit event involving either counterparty occurs;

(4) The effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the derivative contract) of a credit derivative, or other similar instrument, through which the Enterprise provides credit protection, provided that:

(i) The Enterprise may reduce the effective notional principal amount of the credit derivative by the amount of any reduction in the mark-to-fair value of the credit derivative if the reduction is recognized in common equity tier 1 capital;

(ii) The Enterprise may reduce the effective notional principal amount of the credit derivative by the effective notional principal amount of a purchased credit derivative or other similar instrument, provided that the remaining maturity of the purchased credit derivative is equal to or greater than the remaining maturity of the credit derivative through which the Enterprise provides credit protection and that:

(A) With respect to a credit derivative that references a single exposure, the reference exposure of the purchased credit derivative is to the same legal entity and ranks *pari passu* with, or is junior to, the reference exposure of the credit derivative through which the Enterprise provides credit protection; or

(B) With respect to a credit derivative that references multiple exposures, the reference exposures of the purchased credit derivative are to the same legal entities and rank *pari passu* with the reference exposures of the credit derivative through which the Enterprise provides credit protection, and the level of seniority of the purchased credit derivative ranks *pari passu* to the level of seniority of the credit derivative through which the Enterprise provides credit protection;

(C) Where an Enterprise has reduced the effective notional amount of a credit derivative through which the Enterprise provides credit protection in accordance with paragraph (4)(i) of this definition, the Enterprise must also reduce the effective notional principal amount of a purchased credit derivative used to offset the credit derivative through which the Enterprise provides credit protection, by the amount of any increase in the mark-to-fair value of the purchased credit derivative that is recognized in common equity tier 1 capital; and

(D) Where the Enterprise purchases credit protection through a total return swap and records the net payments received on a credit derivative through which the Enterprise provides credit protection in net income, but does not record offsetting deterioration in the mark-to-fair value of the credit derivative through which the Enterprise provides credit protection in net income (either through reductions in fair value or by additions to reserves), the Enterprise may not use the purchased credit protection to offset the effective notional principal amount of the related credit derivative through which the Enterprise provides credit protection;

(5) Where an Enterprise acting as a principal has more than one repo-style transaction with the same counterparty and has offset the gross value of receivables due from a counterparty under reverse repurchase transactions by the gross value of payables under repurchase transactions due to the same counterparty, the gross value of receivables associated with the repo-style transactions less any on-balance sheet receivables amount associated with these repo-style transactions included under paragraph (1) of this definition, unless the following criteria are met:

(i) The offsetting transactions have the same explicit final settlement date under their governing agreements;

(ii) The right to offset the amount owed to the counterparty with the amount owed by the counterparty is legally enforceable in the normal course of business and in the event of receivership, insolvency, liquidation, or similar proceeding; and

(iii) Under the governing agreements, the counterparties intend to settle net, settle simultaneously, or settle according to a process that is the functional equivalent of net settlement, (that is, the cash flows of the transactions are equivalent, in effect, to a single net amount on the settlement date), where both transactions are settled through the same settlement system, the settlement arrangements are supported by cash or intraday credit facilities intended to ensure that settlement of both transactions will occur by the end of the business day, and the settlement of the underlying securities does not interfere with the net cash settlement;

(6) The counterparty credit risk of a repo-style transaction, including where the Enterprise acts as an agent for a repo-style transaction and indemnifies the customer with respect to the performance of the customer's counterparty in an amount limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, calculated as follows:

(i) If the transaction is not subject to a qualifying master netting agreement, the counterparty credit risk (E^*) for transactions with a counterparty must be calculated on a transaction by transaction basis, such that each transaction i is treated as its own netting set, in accordance with the following formula, where Ei is the fair value of the instruments, gold, or cash that the Enterprise has lent, sold subject to repurchase, or provided as collateral to the counterparty, and Ci is the fair value of the instruments, gold, or cash that the Enterprise has borrowed, purchased subject to resale, or received as collateral from the counterparty:

$$Ei^* = \max\{0, [Ei - Ci]\}$$

(ii) If the transaction is subject to a qualifying master netting agreement, the counterparty credit risk (E*) must be calculated as the greater of zero and the total fair value of the instruments, gold, or cash that the Enterprise has lent, sold subject to repurchase or provided as collateral to a counterparty for all transactions included in the qualifying master netting agreement (ΣEi), less the total fair value of the instruments, gold, or cash that the Enterprise borrowed, purchased subject to resale or received as collateral from the counterparty for those transactions (ΣCi), in accordance with the following formula:

$$E^* = \max \{0, [\Sigma Ei - \Sigma Ci]\}$$

(7) If an Enterprise acting as an agent for a repo-style transaction provides a guarantee to a customer of the security or cash its customer has lent or borrowed with respect to the performance of the customer's counterparty and the guarantee is not limited to the difference between the fair value of the security or cash its customer has lent and the fair value of the collateral the borrower has provided, the amount of the guarantee that is greater than the difference between the fair value of the security or cash its customer has lent and the value of the collateral the borrower has provided;

(8) The credit equivalent amount of all off-balance sheet exposures of the Enterprise, excluding repo-style transactions, repurchase or reverse repurchase or securities borrowing or lending transactions that qualify for sales treatment under GAAP, and derivative transactions, determined using the applicable credit conversion factor under 12 CFR 217.33(b), provided, however, that the minimum credit conversion factor that may be assigned to an off-balance sheet exposure under this paragraph is 10 percent; and

(9) For an Enterprise that is a clearing member:

(i) A clearing member Enterprise that guarantees the performance of a clearing member client with respect to a cleared transaction must treat its exposure to the clearing member client as a derivative contract for purposes of determining its adjusted total assets;

(ii) A clearing member Enterprise that guarantees the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client must treat its exposure to the CCP as a derivative contract for purposes of determining its adjusted total assets;

(iii) A clearing member Enterprise that does not guarantee the performance of a CCP with respect to a transaction cleared on behalf of a clearing member client may exclude its exposure to the CCP for purposes of determining its adjusted total assets;

(iv) An Enterprise that is a clearing member may exclude from its adjusted total assets the effective notional principal amount of credit protection sold through a credit derivative contract, or other similar instrument, that it clears on behalf of a clearing member client through a CCP as calculated in accordance with paragraph (4) of this definition; and

(v) Notwithstanding paragraphs (9)(i) through (iii) of this definition, an Enterprise may exclude from its adjusted total assets a clearing member's exposure to a clearing member client for a derivative contract, if the clearing member client and the clearing member are affiliates and consolidated for financial reporting purposes on the Enterprise's balance sheet.

Adjusted total capital means the sum of tier 1 capital and tier 2 capital.

Advanced approaches total risk-weighted assets means:

(1) The sum of:

(i) Credit-risk-weighted assets for general credit risk (including for mortgage exposures), cleared transactions, default fund contributions, unsettled transactions, securitization exposures (including retained CRT exposures), equity exposures, and the fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts, each as calculated under § 1240.123.

(ii) Risk-weighted assets for operational risk, as calculated under § 1240.162(c); and

(iii) Advanced market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the Enterprise's tier 2 capital.

Advanced market risk-weighted assets means the advanced measure for spread risk calculated under § 1240.204(a) multiplied by 12.5.

Affiliate has the meaning given in section 1303(1) of the Safety and Soundness Act (12 U.S.C. 4502(1)).

Allowances for loan and lease losses (ALLL) means valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP. For purposes of this part, *ALLL* includes allowances that have been established through a charge against earnings to cover estimated credit losses associated with off-balance sheet credit exposures as determined in accordance with GAAP.

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of an Enterprise as determined in accordance with GAAP. For all assets other than available-for-sale debt securities or purchased credit deteriorated assets, the carrying value is not reduced by any associated credit loss allowance that is determined in accordance with GAAP.

Central counterparty (CCP) means a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

CFTC means the U.S. Commodity Futures Trading Commission.

Clean-up call means a contractual provision that permits an originating Enterprise or servicer to call securitization exposures before their stated maturity or call date.

Cleared transaction means an exposure associated with an outstanding derivative contract or repo-style transaction that an Enterprise or clearing member has entered into with a central counterparty (that is, a transaction that a central counterparty has accepted).

(1) The following transactions are cleared transactions:

(i) A transaction between a CCP and an Enterprise that is a clearing member of the CCP where the Enterprise enters into the transaction with the CCP for the Enterprise's own account;

(ii) A transaction between a CCP and an Enterprise that is a clearing member of the CCP where the Enterprise is acting as a financial intermediary on behalf of a clearing member client and the transaction offsets another transaction that satisfies the requirements set forth in § 1240.3(a);

(iii) A transaction between a clearing member client Enterprise and a clearing member where the clearing member acts as a financial intermediary on behalf of the clearing member client and enters into an offsetting transaction with a CCP, provided that the requirements set forth in § 1240.3(a) are met; or

(iv) A transaction between a clearing member client Enterprise and a CCP where a clearing member guarantees the performance of the clearing member client Enterprise to the CCP and the transaction meets the requirements of § 1240.3(a)(2) and (a)(3).

(2) The exposure of an Enterprise that is a clearing member to its clearing member client is not a cleared transaction where the Enterprise is either acting as a financial intermediary and enters into an offsetting transaction with a CCP or where the Enterprise

provides a guarantee to the CCP on the performance of the client.

Clearing member means a member of, or direct participant in, a CCP that is entitled to enter into transactions with the CCP.

Clearing member client means a party to a cleared transaction associated with a CCP in which a clearing member acts either as a financial intermediary with respect to the party or guarantees the performance of the party to the CCP.

Client-facing derivative transaction means a derivative contract that is not a cleared transaction where the Enterprise is either acting as a financial intermediary and enters into an offsetting transaction with a qualifying central counterparty (QCCP) or where the Enterprise provides a guarantee on the performance of a client on a transaction between the client and a QCCP.

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to an Enterprise for a single financial contract or for all financial contracts in a netting set and confers upon the Enterprise a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the Enterprise with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the Enterprise's exercise of rights under the agreement may be stayed or avoided:

(1) Under applicable law in the relevant jurisdictions, other than

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (1)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(i) of this definition; or

(2) Other than to the extent necessary for the counterparty to comply with the requirements of subpart I of Federal Reserve Board's Regulation YY (part 252 of this title), part 47 of this title, or part 382 of this title, as applicable.

Commitment means any legally binding arrangement that obligates an Enterprise to extend credit or to purchase assets.

Common equity tier 1 capital is defined in § 1240.20(b).

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization.

Core capital has the meaning given at section 1303(7) of the Safety and Soundness Act (12 U.S.C. 4502(7)).

Corporate exposure means an exposure to a company that is not:

(1) An exposure to a sovereign, the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, a multi-lateral development bank (MDB), a depository institution, a foreign bank, a credit union, or a public sector entity (PSE);

(2) An exposure to a GSE;

(3) A mortgage exposure;

(4) A cleared transaction;

(5) A default fund contribution;

(6) A securitization exposure; or

(7) An equity exposure.

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

Credit-enhancing interest-only strip (CEIO) means an on-balance sheet asset that, in form or in substance:

(1) Represents a contractual right to receive some or all of the interest and no more than a minimal amount of principal due on the underlying exposures of a securitization; and

(2) Exposes the holder of the CEIO to credit risk directly or indirectly associated with the underlying exposures that exceeds a pro rata share of the holder's claim on the underlying exposures, whether through subordination provisions or other credit-enhancement techniques.

Credit risk mitigant means collateral, a credit derivative, or a guarantee.

Credit union means an insured credit union as defined under the Federal Credit Union Act (12 U.S.C. 1752 *et seq.*).

Credit risk transfer (CRT) means any traditional securitization, synthetic securitization, senior/subordinated structure, credit derivative, guarantee, or other structure or arrangement (other than primary mortgage insurance, a traditional securitization that satisfies the conditions under § 1240.41(a), or a synthetic securitization that satisfies the conditions under § 1240.41(b)) that allows an Enterprise to transfer the credit risk of one or more mortgage exposures (reference exposure(s)) to another party (the protection provider).

Current Expected Credit Losses (CECL) means the current expected credit losses methodology under GAAP.

Default fund contribution means the funds contributed or commitments made by a clearing member to a CCP's mutualized loss sharing arrangement.

Depository institution means a depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, credit derivative contracts, and any other instrument that poses similar counterparty credit risks. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

Discretionary bonus payment means a payment made to an executive officer of an Enterprise, where:

(1) The Enterprise retains discretion as to whether to make, and the amount of, the payment until the payment is awarded to the executive officer;

(2) The amount paid is determined by the Enterprise without prior promise to, or agreement with, the executive officer; and

(3) The executive officer has no contractual right, whether express or implied, to the bonus payment.

Distribution means:

(1) A reduction of tier 1 capital through the repurchase of a tier 1 capital instrument or by other means, except when an Enterprise, 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:

(i) A common equity tier 1 capital instrument if the instrument being repurchased was part of the Enterprise's common equity tier 1 capital, or

(ii) A common equity tier 1 or additional tier 1 capital instrument if the instrument being repurchased was part of the Enterprise's tier 1 capital;

(2) 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 an Enterprise, 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;

(3) A dividend declaration or payment on any tier 1 capital instrument;

(4) A dividend declaration or interest payment on any tier 2 capital instrument if the Enterprise has full discretion to permanently or temporarily suspend such payments without triggering an event of default; or

(5) Any similar transaction that FHFA determines to be in substance a distribution of capital.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203, 124 Stat. 1376).

Early amortization provision means a provision in the documentation governing a securitization that, when triggered, causes investors in the securitization exposures to be repaid before the original stated maturity of the securitization exposures, unless the provision:

(1) Is triggered solely by events not directly related to the performance of the underlying exposures or the originating Enterprise (such as material changes in tax laws or regulations); or

(2) Leaves investors fully exposed to future draws by borrowers on the underlying exposures even after the provision is triggered.

Effective notional amount means for an eligible guarantee or eligible credit derivative, the lesser of the contractual notional amount of the credit risk mitigant and the exposure amount of the hedged exposure, multiplied by the percentage coverage of the credit risk mitigant.

Eligible clean-up call means a clean-up call that:

(1) Is exercisable solely at the discretion of the originating Enterprise or servicer;

(2) Is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and

(3)(i) For a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or

(ii) For a synthetic securitization or credit risk transfer, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

Eligible credit derivative means a credit derivative in the form of a credit default swap, nth-to-default swap, total return swap, or any other form of credit derivative approved by FHFA, provided that:

(1) The contract meets the requirements of an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap or nth-to-default swap, the contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due, and similar events;

(4) The terms and conditions dictating the manner in which the contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provide that any required consent to transfer may not be unreasonably withheld;

(7) If the credit derivative is a credit default swap or nth-to-default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event; and

(8) If the credit derivative is a total return swap and the Enterprise records net payments received on the swap as net income, the Enterprise records offsetting deterioration in the value of the hedged exposure (either through reductions in fair value or by an addition to reserves).

Eligible credit reserves means all general allowances that have been established through a charge against earnings or retained earnings to cover expected credit losses associated with on- or off-balance sheet wholesale and retail exposures, including AACL associated with such exposures. Eligible credit reserves exclude allowances that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities and other specific reserves created against recognized losses.

Eligible CRT structure means any category of credit risk transfers that has been approved by FHFA as effective in transferring the credit risk of one or more mortgage exposures to another party, taking into account any counterparty, recourse, or other risk to the Enterprise and any capital, liquidity, or other requirements applicable to counterparties (including any arrangement under which an entity that is approved by an Enterprise to originate multifamily mortgage exposures retains credit risk of one or more multifamily mortgage exposures *pari passu* with the Enterprise on substantially the same terms and conditions as in effect on [the date the proposed rule is published] for Fannie Mae's credit risk transfers known as the ''Delegated Underwriting and Servicing program'').

Eligible guarantee means a guarantee that:

(1) Is written;

(2) Is either:

(i) Unconditional, or

(ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements);

(3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure;

(4) Gives the beneficiary a direct claim against the protection provider;

(5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(6) Except for a guarantee by a sovereign, is legally enforceable against

the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure;

(9) Is not provided by an affiliate of the Enterprise; and

(10) Is provided by an eligible guarantor.

Eligible guarantor means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*), a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

Eligible margin loan means:

(1) An extension of credit where:

(i) The extension of credit is collateralized exclusively by liquid and readily marketable debt or equity securities, or gold;

(ii) The collateral is marked-to-fair value daily, and the transaction is subject to daily margin maintenance requirements; and

(iii) The extension of credit is conducted under an agreement that provides the Enterprise the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case:

(A) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[1] or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (1)(iii)(A)*(1)* in order to facilitate the orderly resolution of the defaulting counterparty; or

(2) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (1)(iii)(A)*(1)* of this definition; and

(B) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of subpart I of the Federal Reserve Board's Regulation YY (part 252 of this title), part 47 of this title, or part 382 of this title, as applicable.

(2) In order to recognize an exposure as an eligible margin loan for purposes of this subpart, an Enterprise must comply with the requirements of § 1240.3(b) with respect to that exposure.

Equity exposure means:

(1) A security or instrument (whether voting or non-voting) that represents a direct or an indirect ownership interest in, and is a residual claim on, the assets and income of a company, unless:

(i) The issuing company is consolidated with the Enterprise under GAAP;

(ii) The Enterprise is required to deduct the ownership interest from tier 1 or tier 2 capital under this part;

(iii) The ownership interest incorporates a payment or other similar obligation on the part of the issuing company (such as an obligation to make periodic payments); or

(iv) The ownership interest is a securitization exposure;

(2) A security or instrument that is mandatorily convertible into a security or instrument described in paragraph (1) of this definition;

(3) An option or warrant that is exercisable for a security or instrument described in paragraph (1) of this definition; or

(4) Any other security or instrument (other than a securitization exposure) to the extent the return on the security or instrument is based on the performance of a security or instrument described in paragraph (1) of this definition.

ERISA means the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1001 *et seq.*).

Executive officer means a person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, or head of a major business line, and other staff that the board of directors of the Enterprise deems to have equivalent responsibility.

Exposure amount means:

(1) For the on-balance sheet component of an exposure (including a mortgage exposure); an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the Enterprise determines the exposure amount under § 1240.39; a cleared transaction; a default fund contribution; or a securitization exposure), the Enterprise's carrying value of the exposure.

(2) For the off-balance sheet component of an exposure (other than an OTC derivative contract; a repo-style transaction or an eligible margin loan for which the Enterprise calculates the exposure amount under § 1240.39; a cleared transaction; a default fund contribution; or a securitization exposure), the notional amount of the off-balance sheet component multiplied by the appropriate credit conversion factor (CCF) in § 1240.35.

(3) For an exposure that is an OTC derivative contract, the exposure amount determined under § 1240.36.

(4) For an exposure that is a cleared transaction, the exposure amount determined under § 1240.37.

(5) For an exposure that is an eligible margin loan or repo-style transaction for which the Enterprise calculates the exposure amount as provided in § 1240.39, the exposure amount determined under § 1240.39.

[1] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute ''securities contracts'' under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve's Regulation EE (12 CFR part 231).

(6) For an exposure that is a securitization exposure, the exposure amount determined under § 1240.42.

Federal Deposit Insurance Act means the Federal Deposit Insurance Act (12 U.S.C. 1813).

Federal Deposit Insurance Corporation Improvement Act means the Federal Deposit Insurance Corporation Improvement Act (12 U.S.C. 4401).

Federal Reserve Board means the Board of Governors of the Federal Reserve System.

Financial collateral means collateral:

(1) In the form of:

(i) Cash on deposit with the Enterprise (including cash held for the Enterprise by a third-party custodian or trustee);

(ii) Gold bullion;

(iii) Long-term debt securities that are not resecuritization exposures and that are investment grade;

(iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade;

(v) Equity securities that are publicly traded;

(vi) Convertible bonds that are publicly traded; or

(vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and

(2) In which the Enterprise has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent).

Foreign bank means a foreign bank as defined in § 211.2 of the Federal Reserve Board's Regulation K (12 CFR 211.2) (other than a depository institution).

Gain-on-sale means an increase in the equity capital of an Enterprise resulting from a traditional securitization other than an increase in equity capital resulting from:

(1) The Enterprise's receipt of cash in connection with the securitization; or

(2) The reporting of a mortgage servicing asset.

General obligation means a bond or similar obligation that is backed by the full faith and credit of a public sector entity (PSE).

Government-sponsored enterprise (GSE) means an entity established or chartered by the U.S. government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government, including an Enterprise.

Guarantee means a financial guarantee, letter of credit, insurance, or other similar financial instrument (other than a credit derivative) that allows one party (beneficiary) to transfer the credit risk of one or more specific exposures (reference exposure) to another party (protection provider).

Investment grade means that the entity to which the Enterprise is exposed through a loan or security, or the reference entity with respect to a credit derivative, has adequate capacity to meet financial commitments for the projected life of the asset or exposure. Such an entity or reference entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

Mortgage-backed security (MBS) means a security collateralized by a pool or pools of mortgage exposures, including any pass-through or collateralized mortgage obligation.

Mortgage exposure means either a single-family mortgage exposure or a multifamily mortgage exposure.

Multifamily mortgage exposure means an exposure that is secured by a first or subsequent lien on a property with five or more residential units.

Mortgage servicing assets (MSAs) means the contractual rights owned by an Enterprise to service for a fee mortgage loans that are owned by others.

Multilateral development bank (MDB) means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which FHFA determines poses comparable credit risk.

Netting set means a group of transactions with a single counterparty that are subject to a qualifying master netting agreement or a qualifying cross-product master netting agreement. For purposes of calculating risk-based capital requirements using the internal models methodology in subpart E of this part, this term does not cover a transaction:

(1) That is not subject to such a master netting agreement; or

(2) Where the Enterprise has identified specific wrong-way risk.

Nth-to-default credit derivative means a credit derivative that provides credit protection only for the nth-defaulting reference exposure in a group of reference exposures.

Originating Enterprise, with respect to a securitization, means an Enterprise that directly or indirectly originated or securitized the underlying exposures included in the securitization.

Over-the-counter (OTC) derivative contract means a derivative contract that is not a cleared transaction. An OTC derivative includes a transaction:

(1) Between an Enterprise that is a clearing member and a counterparty where the Enterprise is acting as a financial intermediary and enters into a cleared transaction with a CCP that offsets the transaction with the counterparty; or

(2) In which an Enterprise that is a clearing member provides a CCP a guarantee on the performance of the counterparty to the transaction.

Protection amount (P) means, with respect to an exposure hedged by an eligible guarantee or eligible credit derivative, the effective notional amount of the guarantee or credit derivative, reduced to reflect any currency mismatch, maturity mismatch, or lack of restructuring coverage (as provided in § 1240.38).

Publicly-traded means traded on:

(1) Any exchange registered with the SEC as a national securities exchange under section 6 of the Securities Exchange Act; or

(2) Any non-U.S.-based securities exchange that:

(i) Is registered with, or approved by, a national securities regulatory authority; and

(ii) Provides a liquid, two-way market for the instrument in question.

Public sector entity (PSE) means a state, local authority, or other governmental subdivision below the sovereign level.

Qualifying central counterparty (QCCP) means a central counterparty that:

(1)(i) Is a designated financial market utility (FMU) under Title VIII of the Dodd-Frank Act;

(ii) If not located in the United States, is regulated and supervised in a manner equivalent to a designated FMU; or

(iii) Meets the following standards:

(A) The central counterparty requires all parties to contracts cleared by the counterparty to be fully collateralized on a daily basis;

(B) The Enterprise demonstrates to the satisfaction of FHFA that the central counterparty:

(1) Is in sound financial condition;

(2) Is subject to supervision by the Federal Reserve Board, the CFTC, or the Securities Exchange Commission (SEC), or, if the central counterparty is not located in the United States, is subject to effective oversight by a national supervisory authority in its home country; and

(3) Meets or exceeds the risk-management standards for central counterparties set forth in regulations established by the Federal Reserve Board, the CFTC, or the SEC under Title VII or Title VIII of the Dodd-Frank Act; or if the central counterparty is not located in the United States, meets or exceeds similar risk-management standards established under the law of its home country that are consistent with international standards for central counterparty risk management as established by the relevant standard setting body of the Bank of International Settlements; and

(2)(i) Provides the Enterprise with the central counterparty's hypothetical capital requirement or the information necessary to calculate such hypothetical capital requirement, and other information the Enterprise is required to obtain under 12 CFR 217.35(d)(3);

(ii) Makes available to FHFA and the CCP's regulator the information described in paragraph (2)(i) of this definition; and

(iii) Has not otherwise been determined by FHFA to not be a QCCP due to its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns that are inconsistent with the risk weight assigned to qualifying central counterparties under § 1240.37.

(3) A QCCP that fails to meet the requirements of a QCCP in the future may still be treated as a QCCP under the conditions specified in § 1240.3(e).

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Enterprise the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i)(A) in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of subpart I of the Federal Reserve Board's Regulation YY (part 252 of this title), part 47 of this title, or part 382 of this title, as applicable.

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the Enterprise acts as agent for a customer and indemnifies the customer against loss, provided that:

(1) The transaction is based solely on liquid and readily marketable securities, cash, or gold;

(2) The transaction is marked-to-fair value daily and subject to daily margin maintenance requirements;

(3)(i) The transaction is a ''securities contract'' or ''repurchase agreement'' under section 555 or 559, respectively, of the Bankruptcy Code (11 U.S.C. 555 or 559), a qualified financial contract under section 11(e)(8) of the Federal Deposit Insurance Act, or a netting contract between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231); or

(ii) If the transaction does not meet the criteria set forth in paragraph (3)(i) of this definition, then either:

(A) The transaction is executed under an agreement that provides the Enterprise the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case:

(1) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (3)(ii)(A)*(1)(i)* in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (3)(ii)(A)*(1)(i)* of this definition; and

(2) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of subpart I of the Federal Reserve Board's Regulation YY (part 252 of this title), part 47 of this title, or part 382 of this title, as applicable; or

(B) The transaction is:

(1) Either overnight or unconditionally cancelable at any time by the Enterprise; and

(2) Executed under an agreement that provides the Enterprise the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of counterparty default; and

(3) In order to recognize an exposure as a repo-style transaction for purposes of this subpart, an Enterprise must comply with the requirements of § 1240.3(e) with respect to that exposure.

Resecuritization means a securitization which has more than one underlying exposure and in which one or more of the underlying exposures is a securitization exposure.

Resecuritization exposure means:

(1) An on- or off-balance sheet exposure to a resecuritization; or

(2) An exposure that directly or indirectly references a resecuritization exposure.

Retained CRT exposure means, with respect to an Enterprise, any exposure that arises from a credit risk transfer of the Enterprise and has been retained by the Enterprise since the issuance or entry into the credit risk transfer by the Enterprise.

Revenue obligation means a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from the specific project financed rather than general tax funds.

Securities and Exchange Commission (SEC) means the U.S. Securities and Exchange Commission.

Securities Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78).

Securitization exposure means:

(1) An on-balance sheet or off-balance sheet credit exposure (including credit-enhancing representations and warranties) that arises from a traditional securitization or synthetic securitization (including a resecuritization);

(2) An exposure that directly or indirectly references a securitization exposure described in paragraph (1) of this definition;

(3) A retained CRT exposure; or

(4) An acquired CRT exposure.

Securitization special purpose entity (securitization SPE) means a corporation, trust, or other entity organized for the specific purpose of holding underlying exposures of a securitization, the activities of which are limited to those appropriate to accomplish this purpose, and the structure of which is intended to isolate the underlying exposures held by the entity from the credit risk of the seller of the underlying exposures to the entity.

Servicer cash advance facility means a facility under which the servicer of the underlying exposures of a securitization may advance cash to ensure an uninterrupted flow of payments to investors in the securitization, including advances made to cover foreclosure costs or other expenses to facilitate the timely collection of the underlying exposures.

Single-family mortgage exposure means an exposure that is secured by a first or subsequent lien on a property with one to four residential units.

Sovereign means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

Sovereign default means noncompliance by a sovereign with its external debt service obligations or the inability or unwillingness of a sovereign government to service an existing loan according to its original terms, as evidenced by failure to pay principal and interest timely and fully, arrearages, or restructuring.

Sovereign exposure means:

(1) A direct exposure to a sovereign; or

(2) An exposure directly and unconditionally backed by the full faith and credit of a sovereign.

Standardized market risk-weighted assets means the standardized measure for spread risk calculated under § 1240.204(a) multiplied by 12.5.

Standardized total risk-weighted assets means:

(1) The sum of:

(i) Total risk-weighted assets for general credit risk as calculated under § 1240.31;

(ii) Total risk-weighted assets for cleared transactions and default fund contributions as calculated under § 1240.37;

(iii) Total risk-weighted assets for unsettled transactions as calculated under § 1240.40;

(iv) Total risk-weighted assets for CRT and other securitization exposures as calculated under § 1240.42;

(v) Total risk-weighted assets for equity exposures as calculated under § 1240.51;

(vi) Risk-weighted assets for operational risk, as calculated under § 1240.162(c); and

(vii) Standardized market risk-weighted assets; minus

(2) Excess eligible credit reserves not included in the Enterprise's tier 2 capital.

Subsidiary means, with respect to a company, a company controlled by that company.

Synthetic securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is retained or transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual mortgage exposure or other retail exposure);

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(4) All or substantially all of the underlying exposures are financial exposures (such as mortgage exposures, loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities).

Tier 1 capital means the sum of common equity tier 1 capital and additional tier 1 capital.

Tier 2 capital is defined in § 1240.20(d).

Total capital has the meaning given at section 1303(23) of the Safety and Soundness Act (12 U.S.C. 4502(23)).

Traditional securitization means a transaction in which:

(1) All or a portion of the credit risk of one or more underlying exposures is transferred to one or more third parties other than through the use of credit derivatives or guarantees;

(2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(3) Performance of the securitization exposures depends upon the performance of the underlying exposures;

(4) All or substantially all of the underlying exposures are financial exposures (such as mortgage exposures, loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities);

(5) The underlying exposures are not owned by an operating company;

(6) The underlying exposures are not owned by a small business investment company defined in section 302 of the Small Business Investment Act;

(7) The underlying exposures are not owned by a firm an investment in which qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act;

(8) FHFA may determine that a transaction in which the underlying exposures are owned by an investment firm that exercises substantially unfettered control over the size and composition of its assets, liabilities, and off-balance sheet exposures is not a traditional securitization based on the transaction's leverage, risk profile, or economic substance;

(9) FHFA may deem a transaction that meets the definition of a traditional securitization, notwithstanding paragraph (5), (6), or (7) of this definition, to be a traditional securitization based on the transaction's leverage, risk profile, or economic substance; and

(10) The transaction is not:

(i) An investment fund;

(ii) A collective investment fund (as defined in 12 CFR 208.34);

(iii) An employee benefit plan (as defined in 29 U.S.C. 1002(3)), a governmental plan (as defined in 29 U.S.C. 1002(32)) that complies with the tax deferral qualification requirements provided in the Internal Revenue Code;

(iv) A synthetic exposure to the capital of a financial institution to the extent deducted from capital under § 1240.22; or

(v) Registered with the SEC under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or foreign equivalents thereof.

Tranche means all securitization exposures associated with a securitization that have the same seniority level.

Underlying exposures means one or more exposures that have been securitized in a securitization transaction.

Wrong-way risk means the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself.

§ 1240.3 Operational requirements for counterparty credit risk.

For purposes of calculating risk-weighted assets under subpart D of this part:

(a) *Cleared transaction.* In order to recognize certain exposures as cleared transactions pursuant to paragraphs (1)(ii), (iii), or (iv) of the definition of ''cleared transaction'' in § 1240.2, the exposures must meet the applicable requirements set forth in this paragraph (a).

(1) The offsetting transaction must be identified by the CCP as a transaction for the clearing member client.

(2) The collateral supporting the transaction must be held in a manner that prevents the Enterprise from facing any loss due to an event of default, including from a liquidation, receivership, insolvency, or similar proceeding of either the clearing member or the clearing member's other clients. Omnibus accounts established under 17 CFR parts 190 and 300 satisfy the requirements of this paragraph (a).

(3) The Enterprise must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from a default or receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the arrangements of paragraph (a)(2) of this section to be legal, valid, binding and enforceable under the law of the relevant jurisdictions.

(4) The offsetting transaction with a clearing member must be transferable under the transaction documents and applicable laws in the relevant jurisdiction(s) to another clearing member should the clearing member default, become insolvent, or enter receivership, insolvency, liquidation, or similar proceedings.

(b) *Eligible margin loan.* In order to recognize an exposure as an eligible margin loan as defined in § 1240.2, an Enterprise must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (1)(iii) of the definition of eligible margin loan in § 1240.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(c) *Qualifying master netting agreement.* In order to recognize an agreement as a qualifying master netting agreement as defined in § 1240.2, an Enterprise must:

(1) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of the definition of qualifying master netting agreement in § 1240.2; and

(ii) In the event of a legal challenge (including one resulting from default or from receivership, insolvency, liquidation, or similar proceeding) the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions; and

(2) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of the definition of qualifying master netting agreement in § 1240.2.

(d) *Repo-style transaction.* In order to recognize an exposure as a repo-style transaction as defined in § 1240.2, an Enterprise must conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that the agreement underlying the exposure:

(1) Meets the requirements of paragraph (3) of the definition of ''repo-style transaction'' in § 1240.2, and

(2) Is legal, valid, binding, and enforceable under applicable law in the relevant jurisdictions.

(e) *Failure of a QCCP to satisfy the rule's requirements.* If an Enterprise determines that a CCP ceases to be a QCCP due to the failure of the CCP to satisfy one or more of the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP in § 1240.2, the Enterprise may continue to treat the CCP as a QCCP for up to three months following the determination. If the CCP fails to remedy the relevant deficiency within three months after the initial determination, or the CCP fails to satisfy the requirements set forth in paragraphs (2)(i) through (2)(iii) of the definition of a ''QCCP'' continuously for a three-month period after remedying the relevant deficiency, an Enterprise may not treat the CCP as a QCCP for the purposes of this part until after the Enterprise has determined that the CCP has satisfied the requirements in paragraphs (2)(i) through (2)(iii) of the definition of a QCCP for three continuous months.

§ 1240.4 Compliance dates.

(a) *Delayed compliance dates.* Certain sections and subparts of this part are subject to delayed compliance dates under this section.

(b) *Reporting compliance.* Section 1240.1(f) has a compliance date of one year from [DATE OF PUBLICATION OF FINAL RULE].

(c) *Capital requirements and buffers.* Subject to paragraph (d) of this section, subpart B of this part has a compliance date with respect to an Enterprise of the later of:

(1) One year from [DATE OF PUBLICATION OF FINAL RULE]; and

(2) The date of the termination of the conservatorship of the Enterprise.

(d) *Capital restoration plan or other interim order.* (1) The Director may determine to direct a later compliance date for an Enterprise to achieve compliance with § 1240.10 based on his assessment of capital market conditions and the likely feasibility of the plan of the Enterprise to achieve capital levels sufficient to comply with § 1240.10 and avoid restrictions on capital distributions and discretionary bonuses under § 1240.11(b).

(2) If the Director makes a determination under paragraph (d)(1) of this section:

(i) For the period between the compliance date for § 1240.11 under paragraph (c) of this section and any later compliance date for § 1240.10 under this paragraph (d), the prescribed capital conservation buffer amount of the Enterprise will be the amount equal to:

(A) The CET1 capital that would otherwise be required under § 1240.10(d); plus

(B) The prescribed capital conservation buffer amount that would otherwise apply under § 1240.11(a)(5);

(ii) For the period between the compliance date for § 1240.11 under paragraph (c) of this section and the later compliance date for § 1240.10 under this paragraph (d), the prescribed leverage buffer amount of the Enterprise will be equal to 4.0 percent of the adjusted total assets of the Enterprise; and

(iii) The compliance date for § 1240.10 will be tolled if the Enterprise is in compliance with:

(A) Any corrective plan pursuant to section 1313B of the Safety and Soundness Act (12 U.S.C. 4513b(b)(1)) and 12 CFR 1236.4(c), approved by FHFA, which may prescribe the feasible actions and milestones by which the Enterprise will achieve compliance with § 1240.10 by the date directed by FHFA; and

(B) Any agreement or order pursuant to section 1371 of the Safety and Soundness Act (12 U.S.C. 4631), including any requirement under any plan required under that agreement or order to achieve compliance with § 1240.10.

Subpart B—Capital Requirements and Buffers

§ 1240.10 Capital requirements.

(a) *Total capital.* An Enterprise must maintain total capital not less than the amount equal to 8.0 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(b) *Adjusted total capital.* An Enterprise must maintain adjusted total capital not less than the amount equal to 8.0 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(c) *Tier 1 capital.* An Enterprise must maintain tier 1 capital not less than the amount equal to 6.0 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(d) *Common equity tier 1 capital.* An Enterprise must maintain common equity tier 1 capital not less than the amount equal to 4.5 percent of the greater of:

(1) Standardized total risk-weighted assets; and

(2) Advanced approaches total risk-weighted assets.

(e) *Core capital.* An Enterprise must maintain core capital not less than the amount equal to 2.5 percent of adjusted total assets.

(f) *Leverage ratio.* An Enterprise must maintain tier 1 capital not less than the amount equal to 2.5 percent of adjusted total assets.

(g) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, an Enterprise must maintain capital commensurate with the level and nature of all risks to which the Enterprise is exposed. The supervisory evaluation of an Enterprise's capital adequacy is based on an individual assessment of numerous factors, including the character and condition of the Enterprise's assets and its existing and prospective liabilities and other corporate responsibilities.

(2) An Enterprise 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.

§ 1240.11 Capital conservation buffer and leverage buffer.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Capital conservation buffer.* An Enterprise's capital conservation buffer is the amount calculated under paragraph (c)(2) of this section.

(2) *Eligible retained income.* The eligible retained income of an Enterprise is the greater of:

(i) The Enterprise's net income, as defined under GAAP, for the four calendar quarters preceding the current calendar quarter, net of any distributions and associated tax effects not already reflected in net income; and

(ii) The average of the Enterprise's net income for the four calendar quarters preceding the current calendar quarter.

(3) *Leverage buffer.* An Enterprise's leverage buffer is the amount calculated under paragraph (d)(2) of this section.

(4) *Maximum payout ratio.* The maximum payout ratio is the percentage of eligible retained income that an Enterprise can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum payout ratio is determined under paragraph (b)(2) of this section.

(5) *Prescribed capital conservation buffer amount.* An Enterprise's prescribed capital conservation buffer amount is equal to its stress capital buffer in accordance with paragraph (a)(7) of this section plus its applicable countercyclical capital buffer amount in accordance with paragraph (e) of this section plus its applicable stability capital buffer in accordance with paragraph (f) of this section.

(6) *Prescribed leverage buffer amount.* An Enterprise's prescribed leverage buffer amount is 1.5 percent of the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter.

(7) *Stress capital buffer.* An Enterprise's stress capital buffer is 0.75 percent of the Enterprise's adjusted total assets, as of the last day of the previous calendar quarter.

(b) *Maximum payout amount.* (1) *Limits on distributions and discretionary bonus payments.* An Enterprise shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the amount equal to the Enterprise's eligible retained income for the calendar quarter, multiplied by its maximum payout ratio.

(2) *Maximum payout ratio.* The maximum payout ratio of an Enterprise is the lowest of the payout ratios determined by its capital conservation buffer and its leverage buffer, as set forth on Table 1 to paragraph (b)(5) of this section.

(3) *No maximum payout amount limitation.* An Enterprise is not subject to a restriction under paragraph (b)(1) of this section if it has:

(i) A capital conservation buffer that is greater than its prescribed capital conservation buffer amount; and

(ii) A leverage buffer that is greater than its prescribed leverage buffer amount.

(4) *Negative eligible retained income.* An Enterprise may not make distributions or discretionary bonus payments during the current calendar quarter if:

(i) The eligible retained income of the Enterprise is negative; and

(ii) Either:

(A) The capital conservation buffer of the Enterprise was less than its stress capital buffer; or

(B) The leverage buffer of the Enterprise was less than its prescribed leverage buffer amount.

(5) *Prior approval.* Notwithstanding the limitations in paragraphs (b)(1) through (b)(3) of this section, FHFA may permit an Enterprise to make a distribution or discretionary bonus payment upon a request of the Enterprise, if FHFA 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 Enterprise. In making such a determination, FHFA will consider the nature and extent of the request and the particular circumstances giving rise to the request.

Table 1 to paragraph (b)(5): Calculation of Maximum Payout Ratio

Capital buffer[2]	Maximum payout ratio
Greater than or equal to the Enterprise's prescribed buffer amount.[3]	No payout ratio limitation applies
Less than the Enterprise's prescribed buffer amount, and greater than or equal to 75 percent of the Enterprise's prescribed buffer amount.	60 percent
Less than 75 percent of the Enterprise's prescribed buffer amount, and greater than or equal to 50 percent of the Enterprise's prescribed buffer amount.	40 percent
Less than 50 percent of the Enterprise's prescribed buffer amount, and greater than or equal to 25 percent of the Enterprise's prescribed buffer amount.	20 percent
Less than 25 percent of the Enterprise's prescribed buffer amount.	0 percent

(c) *Capital conservation buffer*—(1) *Composition of the capital conservation buffer.* The capital conservation buffer is composed solely of common equity tier 1 capital.

(2) *Calculation of capital conservation buffer.* (i) An Enterprise's capital conservation buffer is equal to the lowest of the following, calculated as of the last day of the previous calendar quarter:

(A) The Enterprise's adjusted total capital minus the minimum amount of adjusted total capital under § 1240.10(b);

(B) The Enterprise's tier 1 capital minus the minimum amount of tier 1 capital under § 1240.10(c); or

(C) The Enterprise's common equity tier 1 capital minus the minimum amount of common equity tier 1 capital under § 1240.10(d).

(ii) Notwithstanding paragraphs (c)(2)(i)(A) through (C) of this section, if the Enterprise's adjusted total capital, tier 1 capital, or common equity tier 1 capital is less than or equal to the Enterprise's minimum adjusted total capital, tier 1 capital, or common equity tier 1 capital, respectively, the Enterprise's capital conservation buffer is zero.

(d) *Leverage buffer*—(1) *Composition of the leverage buffer.* The leverage buffer is composed solely of tier 1 capital.

(2) *Calculation of the leverage buffer.* (i) An Enterprise's leverage buffer is equal to the Enterprise's tier 1 capital minus the minimum amount of tier 1 capital under § 1240.10(f), calculated as of the last day of the previous calendar quarter.

(ii) Notwithstanding paragraph (d)(2)(i) of this section, if the Enterprise's tier 1 capital is less than or equal to the minimum amount of tier 1 capital under § 1240.10(d), the Enterprise's leverage buffer is zero.

(e) *Countercyclical capital buffer amount*—(1) *Composition of the countercyclical capital buffer amount.* The countercyclical capital buffer amount is composed solely of common equity tier 1 capital.

(2) *Amount*—(i) *Initial countercyclical capital buffer.* The initial countercyclical capital buffer amount is zero.

(ii) *Adjustment of the countercyclical capital buffer amount.* FHFA will adjust the countercyclical capital buffer amount in accordance with applicable law.

(iii) *Range of countercyclical capital buffer amount.* FHFA will adjust the countercyclical capital buffer amount between zero percent and 0.75 percent of adjusted total assets.

(iv) *Adjustment determination.* FHFA will base its decision to adjust the countercyclical capital buffer amount under this section on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk, including the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and measures of systemic risk.

(3) *Effective date of adjusted countercyclical capital buffer amount*—

(i) *Increase adjustment.* A determination by FHFA under paragraph (e)(2)(ii) of this section to increase the countercyclical capital buffer amount will be effective 12 months from the date of announcement, unless FHFA establishes an earlier effective date and includes a statement articulating the reasons for the earlier effective date.

(ii) *Decrease adjustment.* A determination by FHFA to decrease the established countercyclical capital buffer amount under paragraph (e)(2)(ii) of this section will be effective on the day following announcement of the final determination or the earliest date permissible under applicable law or regulation, whichever is later.

(iii) *Twelve month sunset.* The countercyclical capital buffer amount will return to zero percent 12 months after the effective date that the adjusted countercyclical capital buffer amount is announced, unless FHFA announces a decision to maintain the adjusted countercyclical capital buffer amount or adjust it again before the expiration of the 12-month period.

(f) *Stability capital buffer.* An Enterprise must use its stability capital buffer calculated in accordance with subpart G of this part for purposes of determining its maximum payout ratio under Table 1 to paragraph (b)(5) of this section.

Subpart C—Definition of Capital

§ 1240.20 Capital components and eligibility criteria for regulatory capital instruments.

(a) *Regulatory capital components.* An Enterprise's regulatory capital components are:

(1) Common equity tier 1 capital;

(2) Additional tier 1 capital;

(3) Tier 2 capital;

(4) Core capital; and

(5) Total capital.

[2] An Enterprise's "capital buffer" means, as applicable, its capital conservation buffer or its leverage buffer.

[3] An Enterprise's "prescribed buffer amount" means, as applicable, its prescribed capital conservation buffer amount or its leverage prescribed buffer amount.

(b) *Common equity tier 1 capital.* Common equity tier 1 capital is the sum of the common equity tier 1 capital elements in this paragraph (b), minus regulatory adjustments and deductions in § 1240.22. The common equity tier 1 capital elements are:

(1) Any common stock instruments (plus any related surplus) issued by the Enterprise, net of treasury stock, that meet all the following criteria:

(i) The instrument is paid-in, issued directly by the Enterprise, and represents the most subordinated claim in a receivership, insolvency, liquidation, or similar proceeding of the Enterprise;

(ii) The holder of the instrument is entitled to a claim on the residual assets of the Enterprise that is proportional with the holder's share of the Enterprise's issued capital after all senior claims have been satisfied in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument has no maturity date, can only be redeemed via discretionary repurchases with the prior approval of FHFA to the extent otherwise required by law or regulation, and does not contain any term or feature that creates an incentive to redeem;

(iv) The Enterprise did not create at issuance of the instrument through any action or communication an expectation that it will buy back, cancel, or redeem the instrument, and the instrument does not include any term or feature that might give rise to such an expectation;

(v) Any cash dividend payments on the instrument are paid out of the Enterprise's net income, retained earnings, or surplus related to common stock, and are not subject to a limit imposed by the contractual terms governing the instrument.

(vi) The Enterprise has full discretion at all times to refrain from paying any dividends and making any other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of any other restrictions on the Enterprise;

(vii) Dividend payments and any other distributions on the instrument may be paid only after all legal and contractual obligations of the Enterprise have been satisfied, including payments due on more senior claims;

(viii) The holders of the instrument bear losses as they occur equally, proportionately, and simultaneously with the holders of all other common stock instruments before any losses are borne by holders of claims on the Enterprise with greater priority in a receivership, insolvency, liquidation, or similar proceeding;

(ix) The paid-in amount is classified as equity under GAAP;

(x) The Enterprise, or an entity that the Enterprise controls, did not purchase or directly or indirectly fund the purchase of the instrument;

(xi) The instrument is not secured, not covered by a guarantee of the Enterprise or of an affiliate of the Enterprise, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(xii) The instrument has been issued in accordance with applicable laws and regulations; and

(xiii) The instrument is reported on the Enterprise's regulatory financial statements separately from other capital instruments.

(2) Retained earnings.

(3) Accumulated other comprehensive income (AOCI) as reported under GAAP.[4]

(4) Notwithstanding the criteria for common stock instruments referenced above, an Enterprise's common stock issued and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraphs (b)(1)(iii), (b)(1)(iv) or (b)(1)(xi) of this section, provided that any repurchase of the stock is required solely by virtue of ERISA for an instrument of an Enterprise that is not publicly-traded. In addition, an instrument issued by an Enterprise to its employee stock ownership plan does not violate the criterion in paragraph (b)(1)(x) of this section.

(c) *Additional tier 1 capital.* Additional tier 1 capital is the sum of additional tier 1 capital elements and any related surplus, minus the regulatory adjustments and deductions in § 1240.22. Additional tier 1 capital elements are:

(1) Subject to paragraph (e)(2) of this section, instruments (plus any related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in;

(ii) The instrument is subordinated to general creditors and subordinated debt holders of the Enterprise in a receivership, insolvency, liquidation, or similar proceeding;

(iii) The instrument is not secured, not covered by a guarantee of the Enterprise or of an affiliate of the Enterprise, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(iv) 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

(v) If callable by its terms, the instrument may be called by the Enterprise 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 additional tier 1 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 Enterprise must receive prior approval from FHFA to exercise a call option on the instrument.

(B) The Enterprise does not create at issuance of the instrument, through any action or communication, an expectation that the call option will be exercised.

(C) Prior to exercising the call option, or immediately thereafter, the Enterprise must either: Replace the instrument to be called with an equal amount of instruments that meet the criteria under paragraph (b) of this section or this paragraph (c);[5] or demonstrate to the satisfaction of FHFA that following redemption, the Enterprise will continue to hold capital commensurate with its risk.

(vi) Redemption or repurchase of the instrument requires prior approval from FHFA.

(vii) The Enterprise has full discretion at all times to cancel dividends or other distributions on the instrument without triggering an event of default, a requirement to make a payment-in-kind, or an imposition of other restrictions on the Enterprise except in relation to any distributions to holders of common stock or instruments that are *pari passu* with the instrument.

(viii) Any distributions on the instrument are paid out of the Enterprise's net income, retained earnings, or surplus related to other additional tier 1 capital instruments.

(ix) The instrument does not have a credit-sensitive feature, such as a dividend rate that is reset periodically based in whole or in part on the Enterprise's credit quality, but may have a dividend rate that is adjusted periodically independent of the Enterprise's credit quality, in relation to general market interest rates or similar adjustments.

(x) The paid-in amount is classified as equity under GAAP.

[4] *See* § 1240.22 for specific adjustments related to AOCI.

[5] Replacement can be concurrent with redemption of existing additional tier 1 capital instruments.

(xi) The Enterprise, or an entity that the Enterprise controls, did not purchase or directly or indirectly fund the purchase of the instrument.

(xii) The instrument does not have any features that would limit or discourage additional issuance of capital by the Enterprise, such as provisions that require the Enterprise to compensate holders of the instrument if a new instrument is issued at a lower price during a specified time frame.

(xiii) If the instrument is not issued directly by the Enterprise or by a subsidiary of the Enterprise that is an operating entity, the only asset of the issuing entity is its investment in the capital of the Enterprise, and proceeds must be immediately available without limitation to the Enterprise or to the Enterprise's top-tier holding company in a form which meets or exceeds all of the other criteria for additional tier 1 capital instruments.[6]

(xiv) The governing agreement, offering circular, or prospectus of an instrument issued after [the effective date of the final rule] must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Enterprise enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Notwithstanding the criteria for additional tier 1 capital instruments referenced above, an instrument issued by an Enterprise and held in trust for the benefit of its employees as part of an employee stock ownership plan does not violate any of the criteria in paragraph (c)(1)(iii) of this section, provided that any repurchase is required solely by virtue of ERISA for an instrument of an Enterprise that is not publicly-traded. In addition, an instrument issued by an Enterprise to its employee stock ownership plan does not violate the criteria in paragraphs (c)(1)(v) or (c)(1)(xi) of this section.

(d) *Tier 2 Capital.* Tier 2 capital is the sum of tier 2 capital elements and any related surplus, minus the regulatory adjustments and deductions in § 1240.22. Tier 2 capital elements are:

(1) Subject to paragraph (e)(2) of this section, instruments (plus related surplus) that meet the following criteria:

(i) The instrument is issued and paid-in.

(ii) The instrument is subordinated to general creditors of the Enterprise.

(iii) The instrument is not secured, not covered by a guarantee of the Enterprise or of an affiliate of the Enterprise, 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 tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) and is excluded from regulatory 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 Enterprise to redeem the instrument prior to maturity.[7]

(v) The instrument, by its terms, may be called by the Enterprise 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 tier 2 capital, a tax event. In addition:

(A) The Enterprise must receive the prior approval of FHFA to exercise a call option on the instrument.

(B) The Enterprise 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 Enterprise must either: Replace any amount called with an equivalent amount of an instrument that meets the criteria for regulatory capital under this section;[8] or demonstrate to the satisfaction of FHFA that following redemption, the Enterprise would continue to hold an amount of capital that is commensurate with its risk.

(vi) The holder of the instrument must have no contractual right to accelerate payment of principal or interest on the instrument, except in the event of a receivership, insolvency, liquidation, or similar proceeding of the Enterprise.

(vii) The instrument has no credit-sensitive feature, such as a dividend or interest rate that is reset periodically based in whole or in part on the Enterprise's credit standing, but may have a dividend rate that is adjusted periodically independent of the Enterprise's credit standing, in relation to general market interest rates or similar adjustments.

(viii) The Enterprise, or an entity that the Enterprise controls, has not purchased and has not directly or indirectly funded the purchase of the instrument.

(ix) If the instrument is not issued directly by the Enterprise or by a subsidiary of the Enterprise that is an operating entity, the only asset of the issuing entity is its investment in the capital of the Enterprise, and proceeds must be immediately available without limitation to the Enterprise or the Enterprise's top-tier holding company in a form that meets or exceeds all the other criteria for tier 2 capital instruments under this section.[9]

(x) Redemption of the instrument prior to maturity or repurchase requires the prior approval of FHFA.

(xi) The governing agreement, offering circular, or prospectus of an instrument issued after [the effective date of the final rule] must disclose that the holders of the instrument may be fully subordinated to interests held by the U.S. government in the event that the Enterprise enters into a receivership, insolvency, liquidation, or similar proceeding.

(2) Any eligible credit reserves that exceed expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of credit risk-weighted assets.

(e) *FHFA approval of a capital element.* (1) An Enterprise must receive FHFA prior approval to include a capital element (as listed in this section) in its common equity tier 1 capital, additional tier 1 capital, or tier 2 capital unless the element:

(i) Was included in an Enterprise's tier 1 capital or tier 2 capital prior to [the publication date of the proposed rule] and the underlying instrument may continue to be included under the criteria set forth in this section; or

(ii) Is equivalent, in terms of capital quality and ability to absorb losses with respect to all material terms, to a regulatory capital element FHFA determined may be included in regulatory capital pursuant to paragraph (e)(3) of this section.

(2) An Enterprise may not include an instrument in its additional tier 1 capital or a tier 2 capital unless FHFA has determined that the Enterprise has made appropriate provision, including in any resolution plan of the Enterprise, to ensure that the instrument would not pose a material impediment to the

[6] *De minimis* assets related to the operation of the issuing entity can be disregarded for purposes of this criterion.

[7] An instrument that by its terms automatically converts into a tier 1 capital instrument prior to five years after issuance complies with the five-year maturity requirement of this criterion.

[8] An Enterprise may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

[9] An Enterprise may disregard *de minimis* assets related to the operation of the issuing entity for purposes of this criterion.

ability of an Enterprise to issue common stock instruments following the appointment of FHFA as conservator or receiver under the Safety and Soundness Act.

(3) After determining that a regulatory capital element may be included in an Enterprise's common equity tier 1 capital, additional tier 1 capital, or tier 2 capital, FHFA will make its decision publicly available, including a brief description of the material terms of the regulatory capital element and the rationale for the determination.

(f) *FHFA prior approval.* An Enterprise may not repurchase or redeem any common equity tier 1 capital, additional tier 1, or tier 2 capital instrument without the prior approval of FHFA to the extent such prior approval is required by paragraphs (b), (c), or (d) of this section, as applicable.

§ 1240.21 [Reserved]

§ 1240.22 Regulatory capital adjustments and deductions.

(a) *Regulatory capital deductions from common equity tier 1 capital.* An Enterprise must deduct from the sum of its common equity tier 1 capital elements the items set forth in this paragraph (a):

(1) Goodwill, net of associated deferred tax liabilities (DTLs) in accordance with paragraph (e) of this section, including goodwill that is embedded in the valuation of a significant investment in the capital of an unconsolidated financial institution in the form of common stock (and that is reflected in the consolidated financial statements of the Enterprise), in accordance with paragraph (d) of this section;

(2) Intangible assets, other than MSAs, net of associated DTLs in accordance with paragraph (e) of this section;

(3) Deferred tax assets (DTAs) that arise from net operating loss and tax credit carryforwards net of any related valuation allowances and net of DTLs in accordance with paragraph (e) of this section;

(4) Any gain-on-sale in connection with a securitization exposure;

(5) Any defined benefit pension fund net asset, net of any associated DTL in accordance with paragraph (e) of this section, held by the Enterprise. With the prior approval of FHFA, this deduction is not required for any defined benefit pension fund net asset to the extent the Enterprise has unrestricted and unfettered access to the assets in that fund. An Enterprise must risk weight any portion of the defined benefit pension fund asset that is not deducted under this paragraph (a) as if the Enterprise directly holds a proportional ownership share of each exposure in the defined benefit pension fund.

(6) The amount of expected credit loss that exceeds its eligible credit reserves.

(b) *Regulatory adjustments to common equity tier 1 capital.* (1) An Enterprise must adjust the sum of common equity tier 1 capital elements pursuant to the requirements set forth in this paragraph (b). Such adjustments to common equity tier 1 capital must be made net of the associated deferred tax effects.

(i) An Enterprise must deduct any accumulated net gains and add any accumulated net losses on cash flow hedges included in AOCI that relate to the hedging of items that are not recognized at fair value on the balance sheet.

(ii) An Enterprise must deduct any net gain and add any net loss related to changes in the fair value of liabilities that are due to changes in the Enterprise's own credit risk. An Enterprise must deduct the difference between its credit spread premium and the risk-free rate for derivatives that are liabilities as part of this adjustment.

(c) *Deductions from regulatory capital related to investments in capital instruments.*[10] An Enterprise must deduct an investment in the Enterprise's own capital instruments as follows:

(1) An Enterprise must deduct an investment in the Enterprise's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 1240.20(b)(1);

(2) An Enterprise must deduct an investment in the Enterprise's own additional tier 1 capital instruments from its additional tier 1 capital elements; and

(3) An Enterprise must deduct an investment in the Enterprise's own tier 2 capital instruments from its tier 2 capital elements.

(d) *Items subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds.* (1) An Enterprise must deduct from common equity tier 1 capital elements the amount of each of the items set forth in this paragraph (d) that, individually, exceeds 10 percent of the sum of the Enterprise's common equity tier 1 capital elements, less adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section (the 10 percent common equity tier 1 capital deduction threshold).

(i) DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section. An Enterprise is not required to deduct from the sum of its common equity tier 1 capital elements DTAs (net of any related valuation allowances and net of DTLs, in accordance with paragraph (e) of this section) arising from timing differences that the Enterprise could realize through net operating loss carrybacks. The Enterprise must risk weight these assets at 100 percent.

(ii) MSAs net of associated DTLs, in accordance with paragraph (e) of this section.

(2) An Enterprise must deduct from common equity tier 1 capital elements the items listed in paragraph (d)(1) of this section that are not deducted as a result of the application of the 10 percent common equity tier 1 capital deduction threshold, and that, in aggregate, exceed 17.65 percent of the sum of the Enterprise's common equity tier 1 capital elements, minus adjustments to and deductions from common equity tier 1 capital required under paragraphs (a) through (c) of this section, minus the items listed in paragraph (d)(1) of this section (the 15 percent common equity tier 1 capital deduction threshold).[11]

(3) For purposes of calculating the amount of DTAs subject to the 10 and 15 percent common equity tier 1 capital deduction thresholds, an Enterprise may exclude DTAs and DTLs relating to adjustments made to common equity tier 1 capital under paragraph (b) of this section. An Enterprise that elects to exclude DTAs relating to adjustments under paragraph (b) of this section also must exclude DTLs and must do so consistently in all future calculations. An Enterprise may change its exclusion preference only after obtaining the prior approval of FHFA.

(e) *Netting of DTLs against assets subject to deduction.* (1) Except as described in paragraph (e)(3) of this section, netting of DTLs against assets that are subject to deduction under this section is permitted, but not required, if the following conditions are met:

(i) The DTL is associated with the asset; and

[10] The Enterprise must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL or AACL, as applicable, includable in tier 2 capital under § 1240.20(d).

[11] The amount of the items in paragraph (d) of this section that is not deducted from common equity tier 1 capital pursuant to this section must be included in the risk-weighted assets of the Enterprise and assigned a 250 percent risk weight.

(ii) The DTL would be extinguished if the associated asset becomes impaired or is derecognized under GAAP.

(2) A DTL may only be netted against a single asset.

(3) For purposes of calculating the amount of DTAs subject to the threshold deduction in paragraph (d) of this section, the amount of DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and of DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances, may be offset by DTLs (that have not been netted against assets subject to deduction pursuant to paragraph (e)(1) of this section) subject to the conditions set forth in this paragraph (e).

(i) Only the DTAs and DTLs that relate to taxes levied by the same taxation authority and that are eligible for offsetting by that authority may be offset for purposes of this deduction.

(ii) The amount of DTLs that the Enterprise nets against DTAs that arise from net operating loss and tax credit carryforwards, net of any related valuation allowances, and against DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks, net of any related valuation allowances, must be allocated in proportion to the amount of DTAs that arise from net operating loss and tax credit carryforwards (net of any related valuation allowances, but before any offsetting of DTLs) and of DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks (net of any related valuation allowances, but before any offsetting of DTLs), respectively.

(4) An Enterprise must net DTLs against assets subject to deduction under this section in a consistent manner from reporting period to reporting period. An Enterprise may change its preference regarding the manner in which it nets DTLs against specific assets subject to deduction under this section only after obtaining the prior approval of FHFA.

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if an Enterprise does not have a sufficient amount of a specific component of capital to effect the required deduction after completing the deductions required under paragraph (d) of this section, the Enterprise must deduct the shortfall from the next higher (that is, more subordinated) component of regulatory capital.

(g) *Treatment of assets that are deducted.* An Enterprise must exclude from standardized total risk-weighted assets and advanced approaches total risk-weighted assets any item deducted from regulatory capital under paragraphs (a), (c), and (d) of this section.

Subpart D—Risk-Weighted Assets—Standardized Approach

§ 1240.30 Applicability.

(a) This subpart sets forth methodologies for determining risk-weighted assets for purposes of the generally applicable risk-based capital requirements for the Enterprises.

(b) This subpart is also applicable to covered positions, as defined in subpart F of this part.

Risk-Weighted Assets For General Credit Risk

§ 1240.31 Mechanics for calculating risk-weighted assets for general credit risk.

(a) *General risk-weighting requirements.* An Enterprise must apply risk weights to its exposures as follows:

(1) An Enterprise must determine the exposure amount of each mortgage exposure, each other on-balance sheet exposure, each OTC derivative contract, and each off-balance sheet commitment, trade and transaction-related contingency, guarantee, repo-style transaction, forward agreement, or other similar transaction that is not:

(i) An unsettled transaction subject to § 1240.40;

(ii) A cleared transaction subject to § 1240.37;

(iii) A default fund contribution subject to § 1240.37;

(iv) A retained CRT exposure, acquired CRT exposure, or other securitization exposure subject to §§ 1240.41 through 1240.46; or

(v) An equity exposure (other than an equity OTC derivative contract) subject to § 1240.51.

(2) An Enterprise must multiply each exposure amount by the risk weight appropriate to the exposure based on the exposure type or counterparty, eligible guarantor, or financial collateral to determine the risk-weighted asset amount for each exposure.

(b) *Total risk-weighted assets for general credit risk.* Total risk-weighted assets for general credit risk equals the sum of the risk-weighted asset amounts calculated under this section.

§ 1240.32 General risk weights.

(a) *Exposures to the U.S. government.* (1) Notwithstanding any other requirement in this subpart, an Enterprise must assign a zero percent risk weight to:

(i) An exposure to the U.S. government, its central bank, or a U.S. government agency; and

(ii) The portion of an exposure that is directly and unconditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency. This includes a deposit or other exposure, or the portion of a deposit or other exposure, that is insured or otherwise unconditionally guaranteed by the FDIC or NCUA.

(2) An Enterprise must assign a 20 percent risk weight to the portion of an exposure that is conditionally guaranteed by the U.S. government, its central bank, or a U.S. government agency. This includes an exposure, or the portion of an exposure, that is conditionally guaranteed by the FDIC or NCUA.

(b) *Certain supranational entities and multilateral development banks (MDBs).* An Enterprise must assign a zero percent risk weight to an exposure to the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

(c) *Exposures to GSEs.* (1) An Enterprise must assign a zero percent risk weight to any MBS guaranteed by the Enterprise (other than any retained CRT exposure).

(2) An Enterprise must assign a 20 percent risk weight to an exposure to another GSE, including an MBS guaranteed by the other Enterprise, other than an equity exposure or preferred stock.

(d) *Exposures to depository institutions and credit unions.* (1) An Enterprise must assign a 20 percent risk weight to an exposure to a depository institution or credit union that is organized under the laws of the United States or any state thereof, except as otherwise provided under paragraph (d)(2) of this section.

(2) An Enterprise must assign a 100 percent risk weight to an exposure to a financial institution if the exposure may be included in that financial institution's capital unless the exposure is:

(i) An equity exposure; or

(ii) Deducted from regulatory capital under § 1240.22.

(e) *Exposures to U.S. public sector entities (PSEs).* (1) An Enterprise must assign a 20 percent risk weight to a general obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(2) An Enterprise must assign a 50 percent risk weight to a revenue

obligation exposure to a PSE that is organized under the laws of the United States or any state or political subdivision thereof.

(f) *Corporate exposures.* An Enterprise must assign a 100 percent risk weight to all its corporate exposures.

(g) *Residential mortgage exposures*—(1) *Single-family mortgage exposures.* An Enterprise must assign a risk weight to a single-family mortgage exposure in accordance with § 1240.33.

(2) *Multifamily mortgage exposures.* An Enterprise must assign a risk weight to a multifamily mortgage exposure in accordance with § 1240.34.

(h) *Past due exposures.* Except for an exposure to a sovereign entity or a mortgage exposure, if an exposure is 90 days or more past due or on nonaccrual:

(1) An Enterprise must assign a 150 percent risk weight to the portion of the exposure that is not guaranteed or that is unsecured;

(2) An Enterprise may assign a risk weight to the guaranteed portion of a past due exposure based on the risk weight that applies under § 1240.38 if the guarantee or credit derivative meets the requirements of that section; and

(3) An Enterprise may assign a risk weight to the collateralized portion of a past due exposure based on the risk weight that applies under § 1240.39 if the collateral meets the requirements of that section.

(i) *Other assets.* (1) An Enterprise must assign a zero percent risk weight to cash owned and held in the offices of an insured depository institution or in transit.

(2) An Enterprise must assign a 20 percent risk weight to cash items in the process of collection.

(3) An Enterprise must assign a 100 percent risk weight to DTAs arising from temporary differences that the Enterprise could realize through net operating loss carrybacks.

(4) An Enterprise must assign a 250 percent risk weight to the portion of each of the following items to the extent it is not deducted from common equity tier 1 capital pursuant to § 1240.22(d):

(i) MSAs; and

(ii) DTAs arising from temporary differences that the Enterprise could not realize through net operating loss carrybacks.

(5) An Enterprise must assign a 100 percent risk weight to all assets not specifically assigned a different risk weight under this subpart and that are not deducted from tier 1 or tier 2 capital pursuant to § 1240.22.

(j) *Insurance assets.* (1) An Enterprise must risk-weight the individual assets held in a separate account that does not qualify as a non-guaranteed separate account as if the individual assets were held directly by the Enterprise.

(2) An Enterprise must assign a zero percent risk weight to an asset that is held in a non-guaranteed separate account.

§ 1240.33 Single-family mortgage exposures.

(a) *Definitions.* Subject to any additional instructions set forth on Table 1 to this paragraph (a), for purposes of this section:

Adjusted MTMLTV means, with respect to a single-family mortgage exposure, the amount equal to:

(i) The MTMLTV of the single-family mortgage exposure (or, if the loan age of the single-family mortgage exposure is less than 6, the OLTV of the single-family mortgage exposure); divided by

(ii) The amount equal to 1 plus the single-family countercyclical adjustment of the single-family mortgage exposure.

Approved insurer means an insurance company that is currently approved by an Enterprise to guarantee or insure single-family mortgage exposures acquired by the Enterprise.

Cancellable mortgage insurance means a mortgage insurance policy that, pursuant to its terms, may or will be terminated before the maturity date of the insured single-family mortgage exposure, including as required or permitted by the Homeowners Protection Act of 1998 (12 U.S.C. 4901).

Charter-level coverage means mortgage insurance that satisfies the minimum requirements of the authorizing statute of an Enterprise.

Cohort burnout means the number of refinance opportunities since the loan age of the single-family mortgage exposure was 6, categorized into ranges pursuant to the instructions set forth on Table 1 to this paragraph (a).

Coverage percent means, with respect to mortgage insurance or a recourse agreement, the percent of the sum of the unpaid principal balance, any lost interest, and any foreclosure costs that is used to determine the benefit or other coverage under a mortgage insurance policy or recourse agreement.

Days past due means the number of days a single-family mortgage exposure is past due.

Debt-to-income ratio (DTI) means the ratio of a borrower's total monthly obligations (including housing expense) divided by the borrower's monthly income, as calculated under the Guide of the Enterprise.

Deflated single-family house price index (DeflatedSFHPI) means the amount equal to:

(i) The most recently available FHFA quarterly, not-seasonally-adjusted U.S. all transactions house price index; divided by

(ii) The average quarterly observation from the Consumer Price Index for All Urban Consumers, All Items Less Shelter in U.S. City Average, that corresponds to the same quarter.

Full recourse agreement means a recourse agreement that provides for a coverage percent of 100 percent and has a term of the coverage that is equal to the life of the single-family mortgage exposure.

Guide means, as applicable, the Fannie Mae Single Family Selling Guide, the Fannie Mae Single Family Servicing Guide and the Freddie Mac Single-family Seller/Servicers Guide.

Guide-level coverage means mortgage insurance that satisfies the requirements of the Guide of the Enterprise with respect to mortgage insurance that has a coverage percent that exceeds charter-level coverage.

Interest-only (IO) means a single-family mortgage exposure that requires only payment of interest without any principal amortization during all or part of the loan term.

Loan age means the number of scheduled payment dates since the origination of a single-family mortgage exposure.

Loan-level credit enhancement means:

(i) Mortgage insurance;

(ii) A recourse agreement; or

(iii) A participation agreement.

Loan documentation means the completeness of the documentation used to underwrite a single-family mortgage exposure, as determined under the Guide of the Enterprise.

Loan purpose means the purpose of a single-family mortgage exposure at origination.

Long-run single-family house price index trend (LRSFHPITrend) means,

$$LRSFHPITrend = 1.0873681e^{0.00294746 * (\text{Number of Quarters})}$$

where equal to the number of quarters from 1975Q1 to the given reporting quarter and where 1975Q1 is counted as one.

MI cancellation feature means an indicator for whether mortgage insurance is cancellable mortgage insurance or non-cancellable mortgage insurance, assigned pursuant to the instructions set forth on Table 1 to this paragraph (a).

Modification means:

(i) Any permanent amendment or other change to the interest rate, maturity date, unpaid principal balance, or other contractual term of a single-family mortgage exposure; or

(ii) Entry into any repayment plan with respect to any amounts that are past due under the terms of a single-family mortgage exposure.

Modified re-performing loan (modified RPL) means a single-family mortgage exposure (other than an NPL) that has been subject to a modification.

Months since last modification means the number of scheduled payment dates since the effective date of the last modification of a single-family mortgage exposure.

Mortgage concentration risk means the extent to which a mortgage insurer or other counterparty is exposed to mortgage credit risk relative to other risks.

MTMLTV means, with respect to a single-family mortgage exposure, the amount equal to:

(i) The unpaid principal balance of the single-family mortgage exposure; divided by

(ii) The amount equal to:

(A) The unpaid principal balance of the single-family mortgage exposure at origination; divided by

(B) The OLTV of the single-family mortgage exposure; multiplied by

(C) The most recently available FHFA Purchase-only State-level House Price Index of the State in which the property securing the singe-family mortgage exposure is located; divided by

(D) The FHFA Purchase-only State-level House Price Index, as of date of the origination of the single-family mortgage exposure, in which the property securing the singe-family mortgage exposure is located.

Non-cancellable mortgage insurance means a mortgage insurance policy that, pursuant to its terms, may not be terminated before the maturity date of the insured single-family mortgage exposure.

Non-modified re-performing loan (non-modified RPL) means a single-family mortgage exposure (other than a modified RPL or an NPL) that was previously an NPL at any time in the prior 48 calendar months.

Non-performing loan (NPL) means a single-family mortgage exposure that is 60 days or more past due.

Occupancy type means the borrowers' intended use of the property securing a single-family mortgage exposure.

Original credit score means the borrower's credit score as of the origination date of a single-family mortgage exposure.

OLTV means, with respect to a single-family mortgage exposure, the amount equal to:

(i) The unpaid principal balance of the single-family mortgage exposure at origination; divided by

(ii) The lesser of:

(A) The appraised value of the property securing the single-family mortgage exposure; and

(B) The sale price of the property securing the single-family mortgage exposure.

Origination channel means the type of institution that originated a single-family mortgage exposure, assigned pursuant to the instructions set forth on Table 1 to this paragraph (a).

Partial recourse agreement means a recourse agreement that is not a full recourse agreement.

Participation agreement means, with respect to a single-family mortgage exposure, any agreement between an Enterprise and the seller of the single-family mortgage exposure pursuant to which the seller retains a participation of not less than 10 percent in the single-family mortgage exposure.

Past due means, with respect to a single-family mortgage exposure, that any amount required to be paid by the borrower under the terms of the single-family mortgage exposure has not been paid.

Payment change from modification means the amount, expressed as a percent, equal to:

(i) The amount equal to:

(A) The monthly payment of a single-family mortgage exposure after a modification; divided by

(B) The monthly payment of the single-family mortgage exposure before the modification; minus

(ii) 1.0.

Percentage difference between DeflatedSFHPI and LRSFHPITrend (DiffLRSFHPITrend%) means

$$DiffLRSFHPITrend_{\%} = 100 * \left(\frac{DeflatedSFHPI}{LRSFHPITrend} - 1\right).$$

Performing loan means any single-family mortgage exposure that is not an NPL, a modified RPL, or a non-modified RPL.

Previous maximum days past due means the maximum number of days a modified RPL or non-modified RPL was past due in the prior 36 calendar months.

Product type means an indicator reflecting the contractual terms of a single-family mortgage exposure as of the origination date, assigned pursuant to the instructions set forth on Table 1 to this paragraph (a).

Property type means the physical structure of the property securing a single-family mortgage exposure.

Recourse agreement means, with respect to a single-family mortgage exposure, any agreement (other than a participation agreement) between an Enterprise and the seller of the single-family mortgage exposure pursuant to which the seller agrees either to reimburse the Enterprise for any loss arising out of the default of single-family mortgage exposure or to repurchase or replace the single-family mortgage exposure in the event of the default of the single-family mortgage exposure.

Refinance opportunity means, with respect to a single-family mortgage exposure, any calendar month in which the Primary Mortgage Market Survey (PMMS) rate for the month and year of the origination of the single-family mortgage exposure exceeds the PMMS rate for that calendar month by more than 50 basis points.

Refreshed credit score means the borrower's most recently available credit score.

Single-family countercyclical adjustment (SFCCyCAdj%) means if *DiffLRSFHPITrend%* is greater than 5% then

$$SFCCyCAdj_{\%} = 100 * \left(\frac{105\% * LRSFHPITrend}{DeflatedSFHPI} - 1\right).$$

if *DiffLRSFHPITrend%* is less than −5% then

$$SFCCyCAdj_{\%} = 100 * \left(\frac{95\% * LRSFHPITrend}{DeflatedSFHPI} - 1\right).$$

Otherwise *SFCCyCAdj%* = 0%.

Streamlined refi means a single-family mortgage exposure that was refinanced through a streamlined refinance program of an Enterprise, including the Home Affordable Refinance Program, Relief Refi, and Refi-Plus.

Subordination means, with respect to a single-family mortgage exposure, the amount equal to the original unpaid principal balance of any second lien single-family mortgage exposure divided by the lesser of the appraised value or sale price of the property that secures the single-family mortgage exposure.

TABLE 1 TO PARAGRAPH (a): PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS

Defined term	Permissible values	Additional instructions
Cohort burnout	"No burnout," if the single-family mortgage exposure has not had a refinance opportunity since the loan age of the single-family mortgage exposure was 6. "Low," if the single-family mortgage exposure has had 12 or fewer refinance opportunities since the loan age of the single-family mortgage exposure was 6. "Medium," if the single-family mortgage exposure has had between 13 and 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6. "High," if the single-family mortgage exposure has had more than 24 refinance opportunities since the loan age of the single-family mortgage exposure was 6.	High if unable to determine.
Coverage percent	0 percent <= coverage percent <= 100 percent	0 percent if outside of permissible range or unable to determine.
Days past due	Non-negative integer	210 if negative or unable to determine.
Debt-to-income (DTI) ratio	0 percent < DTI < 100 percent	42 percent if outside of permissible range or unable to determine.
Interest-only (IO)	Yes, no	Yes if unable to determine.
Loan age	0 <= loan age <= 500	500 if outside of permissible range or unable to determine.
Loan documentation	None, low, full	None if unable to determine.
Loan purpose	Purchase, cashout refinance, rate/term refinance	Cashout refinance if unable to determine.
MTMLTV	0 percent < MTMLTV <= 300 percent	If the property securing the single-family mortgage exposure is located in Puerto Rico or the U.S. Virgin Islands, use the FHFA House Price Index of the United States. If the property securing the single-family mortgage exposure is located in Hawaii, use the FHFA Purchase-only State-level House Price Index of Guam. If the single-family mortgage exposure was originated before 1991, use the Enterprise's proprietary housing price index. Use geometric interpolation to convert quarterly housing price index data to monthly data. 300 percent if outside of permissible range or unable to determine.
Mortgage concentration risk	High, not high	High if unable to determine.
MI cancellation feature	Cancellable mortgage insurance, non-cancellable mortgage insurance.	Cancellable mortgage insurance, if unable to determine.
Occupancy type	Investment, owner-occupied, second home	Investment if unable to determine.
OLTV	0 percent < OLTV <= 300 percent	300 percent if outside of permissible range or unable to determine.

TABLE 1 TO PARAGRAPH (a): PERMISSIBLE VALUES AND ADDITIONAL INSTRUCTIONS—Continued

Defined term	Permissible values	Additional instructions
Original credit score	300 <= original credit score <= 850	If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single original credit score: • If there are credit scores from two repositories, take the lower credit score. • If there are credit scores from three repositories, use the middle credit score. • If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score. If there are multiple borrowers, use the following logic to determine a single original credit score: • Using the logic above, determine a single credit score for each borrower. • Select the lowest single credit score across all borrowers. 600 if outside of permissible range or unable to determine.
Origination channel	Retail, third-party origination (TPO)	TPO includes broker and correspondent channels. TPO if unable to determine.
Payment change from modification.	−80 percent < payment change from modification < 50 percent.	If the single-family mortgage exposure initially had an adjustable or step-rate feature, the monthly payment after a permanent modification is calculated using the initial modified rate. 0 percent if unable to determine. −79 percent if less than or equal to −80 percent. 49 percent if greater than or equal to 50 percent.
Previous maximum days past due.	Non-negative integer	181 months if negative or unable to determine.
Product type	"FRM30" means a fixed-rate single-family mortgage exposure with an original amortization term greater than 309 months and less than or equal to 429 months. "FRM20" means a fixed-rate single-family mortgage exposure with an original amortization term greater than 189 months and less than or equal to 309 months. "FRM15" means a fixed-rate single-family mortgage exposure with an original amortization term less than or equal to 189 months. "ARM1/1" is an adjustable-rate single-family mortgage exposure that has a mortgage rate and required payment that adjust annually.	Product types other than FRM30, FRM20, FRM15 or ARM1/1 should be assigned to FRM30. Use the post-modification product type for modified mortgage exposures. ARM1/1 if unable to determine.
Property type	1-unit, 2–4 units, condominium, manufactured home	Use condominium for cooperatives. 2–4 units if unable to determine.
Refreshed credit score	300 <= refreshed credit score <= 850	If there are credit scores from multiple credit repositories for a borrower, use the following logic to determine a single refreshed credit score: • If there are credit scores from two repositories, take the lower credit score. • If there are credit scores from three repositories, use the middle credit score. • If there are credit scores from three repositories and two of the credit scores are identical, use the identical credit score. If there are multiple borrowers, use the following logic to determine a single Original Credit Score: • Using the logic above, determine a single credit score for each borrower. • Select the lowest single credit score across all borrowers. 600 if outside of permissible range or unable to determine.
Streamlined refi	Yes, no	No if unable to determine.
Subordination	0 percent <= Subordination <= 80 percent	80 percent if outside permissible range.

(b) *Risk weight*—(1) *In general.* Subject to paragraph (b)(2) of this section, an Enterprise must assign a risk weight to a single-family mortgage exposure equal to:

(i) The base risk weight for the single-family mortgage exposure as determined under paragraph (c) of this section; multiplied by

(ii) The combined risk multiplier for the single-family mortgage exposure as determined under paragraph (d) of this section; multiplied by

(iii) The adjusted credit enhancement multiplier for the single-family mortgage exposure as determined under paragraph (e) of this section.

(2) *Minimum risk weight.* Notwithstanding the risk weight determined under paragraph (b)(1) of this section, the risk weight assigned to a single-family mortgage exposure may not be less than 15 percent.

(c) *Base risk weight*—(1) *Performing loan.* The base risk weight for a performing loan is set forth on Table 2 to this paragraph (c)(1). For purposes of this paragraph (c)(1), credit score means, with respect to a single-family mortgage exposure, (i) the original credit score of the single-family mortgage exposure, if the loan age of the single-family mortgage exposure is less than 6, or (ii) the refreshed credit score of the single-family mortgage exposure.

Table 2 to paragraph (c)(1): Performing Loans

	Adjusted MTMLTV											
Credit Score	<= 30%	> 30%, <= 60%	> 60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
< 620	2%	18%	49%	72%	105%	129%	159%	188%	218%	247%	275%	317%
>=620, < 640	2%	14%	39%	58%	84%	102%	127%	151%	178%	208%	237%	282%
>=640, < 660	2%	12%	34%	51%	73%	89%	111%	133%	159%	186%	214%	258%
>=660, < 680	2%	10%	29%	44%	63%	78%	98%	119%	141%	168%	194%	236%
>=680, < 700	2%	9%	26%	38%	55%	67%	88%	109%	125%	150%	176%	215%
>=700, < 720	2%	8%	22%	33%	47%	57%	75%	94%	110%	134%	158%	194%
>=720, < 740	2%	6%	19%	28%	41%	50%	66%	84%	96%	118%	140%	172%
>=740, < 760	2%	5%	16%	23%	33%	40%	54%	69%	80%	99%	119%	147%
>=760, < 780	2%	4%	13%	19%	27%	32%	43%	56%	65%	82%	99%	122%
>= 780	2%	3%	10%	14%	21%	25%	33%	43%	50%	63%	77%	96%

(2) *Non-modified RPL.* The base risk weight for a non-modified RPL is set forth on Table 3 to this paragraph (c)(2). For purposes of this paragraph (c)(2), re-performing duration means, with respect to a non-modified RPL, the number of scheduled payment dates since the non-modified RPL was last an NPL.

Table 3 to paragraph (c)(2): Non-Modified RPLs

	Adjusted MTMLTV											
Non-modified re-performing duration	<= 30%	> 30%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
<= 3	2%	20%	50%	69%	84%	105%	122%	135%	149%	160%	174%	180%
>3, <= 12	2%	14%	39%	54%	67%	84%	100%	113%	127%	141%	160%	177%
> 12, <= 36	2%	11%	32%	46%	57%	69%	84%	97%	111%	127%	150%	175%
> 36, <= 48	2%	7%	21%	32%	46%	56%	72%	88%	103%	123%	143%	174%

(3) *Modified RPL.* The base risk weight for a modified RPL is set forth on Table 4 to this paragraph (c)(3). For purposes of this paragraph (c)(3), re-performing duration means, with respect to a modified RPL, the lesser of: (i) The months since last modification of the modified RPL; and (ii) the number of scheduled payment dates since the modified RPL was last an NPL.

Table 4 to paragraph (c)(3): Modified RPLs

	Adjusted MTMLTV											
Modified re-performing duration	<= 30%	> 30%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%, <= 95%	> 95%, <= 100%	> 100%, <= 110%	> 110%, <= 120%	> 120%
<= 3	2%	31%	76%	98%	115%	129%	145%	159%	170%	179%	189%	196%
>3, <= 12	2%	25%	62%	81%	95%	109%	124%	139%	152%	164%	178%	195%
> 12, <= 36	2%	19%	50%	66%	79%	92%	107%	123%	136%	152%	169%	194%
> 36	2%	13%	35%	50%	68%	80%	98%	117%	133%	150%	168%	193%

(4) *NPL.* The base risk weight for an NPL is set forth on Table 5 to this paragraph (c)(4).

Table 5 to paragraph (c)(4): NPLs

	Adjusted MTMLTV							
Days past due	<= 30%	> 30%, <= 60%	>60%, <= 70%	> 70%, <= 75%	> 75%, <= 80%	> 80%, <= 85%	> 85%, <= 90%	> 90%
60 to 89 days	8%	71%	173%	193%	205%	215%	226%	238%
90 to 209 days	11%	85%	184%	201%	211%	218%	224%	230%
>= 210 days	28%	124%	219%	227%	231%	233%	234%	221%

(d) *Combined risk multiplier.* The combined risk multiplier for a single-family mortgage exposure is equal to the product of each of the applicable risk multipliers set forth under the applicable single-family segment on Table 6 to this paragraph (d).

TABLE 6 TO PARAGRAPH (d): RISK MULTIPLIERS

Risk factor	Value or range	Single-family segment			
		Performing loan	Non-modified RPL	Modified RPL	NPL
Loan Purpose	Purchase	1.0	1.0	1.0	
	Cashout refinance	1.4	1.4	1.4	
	Rate/term refinance	1.3	1.2	1.3	
Occupancy Type	Owner-occupied or second home	1.0	1.0	1.0	1.0
	Investment	1.2	1.5	1.3	1.2
Property Type	1-unit	1.0	1.0	1.0	1.0
	2–4 unit	1.4	1.4	1.3	1.1
	Condominium	1.1	1.0	1.0	1.0
	Manufactured home	1.3	1.8	1.6	1.2
Origination Channel	Retail	1.0	1.0	1.0	1.0
	TPO	1.1	1.1	1.1	1.0
DTI	DTI <= 25%	0.8	0.9	0.9	
	25% < DTI <= 40%	1.0	1.0	1.0	
	DTI > 40%	1.2	1.2	1.1	
Product Type	FRM30	1.0	1.0	1.0	1.0
	ARM1/1	1.7	1.1	1.0	1.1
	FRM15	0.3	0.3	0.5	0.5
	FRM20	0.6	0.6	0.5	0.8
Subordination	No subordination	1.0	1.0	1.0	
	30% < OLTV <= 60% and 0% < subordination <= 5%	1.1	0.8	1.0	
	30% < OLTV <= 60% and subordination > 5%.	1.5	1.1	1.2	
	OLTV > 60% and 0% < subordination <= 5%	1.1	1.2	1.1	

TABLE 6 TO PARAGRAPH (d): RISK MULTIPLIERS—Continued

Risk factor	Value or range	Single-family segment			
		Performing loan	Non-modified RPL	Modified RPL	NPL
	OLTV > 60% and subordination > 5%	1.4	1.5	1.3	
Loan Age	Loan age <= 24 months	1.0			
	24 months < loan age <= 36 months	0.95			
	36 months < loan Age <= 60 months.	0.80			
	Loan age > 60 months	0.75			
Cohort Burnout	No burnout	1.0			
	Low	1.2			
	Medium	1.3			
	High	1.4			
Interest-only	No IO	1.0	1.0	1.0	
	Yes IO	1.6	1.4	1.1	
Loan Documentation	Full	1.0	1.0	1.0	
	None or low	1.3	1.3	1.2	
Streamlined Refi	No	1.0	1.0	1.0	
	Yes	1.0	1.2	1.1	
Refreshed Credit Score for Modified RPLs and Non-modified RPLs.	Refreshed credit score < 620		1.6	1.4	
	620 <= refreshed credit score < 640		1.3	1.2	
	640 <= refreshed credit score < 660		1.2	1.1	
	660 <= refreshed credit score < 700		1.0	1.0	
	700 <= refreshed credit score < 720		0.7	0.8	
	720 <= refreshed credit score < 740		0.6	0.7	
	740 <= refreshed credit score < 760		0.5	0.6	
	760 <= refreshed credit score < 780		0.4	0.5	
	Refreshed credit score >= 780		0.3	0.4	
Payment Change from Modification	Payment change >= 0%			1.1	
	−20% <= payment change < 0%			1.0	
	−30% <= payment change < −20%.			0.9	
	Payment change < −30%			0.8	
Previous Maximum Days Past Due	0–59 days		1.0	1.0	
	60–90 days		1.2	1.1	
	91–150 days		1.3	1.1	
	151+ days		1.5	1.1	
Refreshed Credit Score for NPLs	Refreshed credit score < 580				1.2
	580 <= refreshed credit score < 640				1.1
	640 <= refreshed credit score < 700				1.0
	700 <= refreshed credit score < 720				0.9
	720 <= refreshed credit score < 760				0.8
	760 <= refreshed credit score < 780				0.7
	Refreshed credit score >= 780				0.5

(e) *Credit enhancement multiplier*—(1) *Amount*—(i) *In general.* The adjusted credit enhancement multiplier for a single-family mortgage exposure that is subject to loan-level credit enhancement is equal to 1.0 minus the product of:

(A) 1.0 minus the credit enhancement multiplier for the single-family mortgage exposure as determined under paragraph (e)(2) of this section; multiplied by

(B) 1.0 minus the counterparty haircut for the loan-level credit enhancement as determined under paragraph (e)(3) of this section.

(ii) *No loan-level credit enhancement.* The adjusted credit enhancement multiplier for a single-family mortgage exposure that is not subject to loan-level credit enhancement is equal to 1.0.

(2) *Credit enhancement multiplier.* (i) The credit enhancement multiplier for a single-family mortgage exposure that is subject to a participation agreement is 1.0.

(ii) The credit enhancement multiplier for a single-family mortgage exposure that is subject to a full recourse agreement is 0.

(iii) The credit enhancement multiplier for a single-family mortgage exposure that is subject to a partial recourse agreement is:

(A) 1.0; minus

(B) The amount equal to:

(1) The coverage percent of the partial recourse agreement; multiplied by

(2) A loss timing adjustment determined under § 1240.44(g) as if the partial recourse agreement were a CRT.

(iv) Subject to paragraph (e)(2)(v) of this section, the credit enhancement multiplier for—

(A) A performing loan, non-modified RPL, or modified RPL that is subject to non-cancellable mortgage insurance is set forth on Table 7 to paragraph (e)(2)(v)(E) of this section;

(B) A performing loan or non-modified RPL that is subject to cancellable mortgage insurance is set forth on Table 8 to paragraph (e)(2)(v)(E) of this section;

(C) A modified RPL with a 30-year post-modification amortization that is subject to cancellable mortgage insurance is set forth on Table 9 to paragraph (e)(2)(v)(E) of this section;

(D) A modified RPL with a 40-year post-modification amortization that is subject to cancellable mortgage insurance is set forth on Table 10 to paragraph (e)(2)(v)(E) of this section; and

(E) NPL, whether subject to non-cancellable mortgage insurance or cancellable mortgage insurance, is set forth on Table 11 to paragraph (e)(2)(v)(E) of this section.

(v) Notwithstanding anything to the contrary in this paragraph (e), for purposes of paragraph (e)(2)(iv) of this section:

(A) The OLTV of a single-family mortgage exposure will be deemed to be 80 percent if the single-family mortgage exposure has an OLTV less than or equal to 80 percent.

(B) If the single-family mortgage exposure has an interest-only feature, any cancellable mortgage insurance will be deemed to be non-cancellable mortgage insurance.

(C) If the coverage percent of the mortgage insurance is greater than charter-level coverage and less than guide-level coverage, the credit enhancement multiplier is the amount equal to a linear interpolation between the credit enhancement multiplier of the single-family mortgage exposure for charter-level coverage and the credit enhancement multiplier of the single-family mortgage exposure for guide-level coverage.

(D) If the coverage percent of the mortgage insurance is less than charter-level coverage, the credit enhancement multiplier is the amount equal to the midpoint of a linear interpolation between a credit enhancement multiplier of 1.0 and the credit enhancement multiplier of the single-family mortgage exposure for charter-level coverage.

(E) If the coverage percent of the mortgage insurance is greater than guide-level coverage, the credit enhancement multiplier is determined as if the coverage percent were guide-level coverage.

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Table 7 to paragraph (e)(2)(v)(E): Credit Enhancement Multipliers for Single-family Mortgage Exposures Subject to Non-Cancellable Mortgage Insurance (Except NPLs)

Amortization Term / Coverage Type	Coverage Category	Credit Enhancement Multiplier
15/20-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.846
	85% < OLTV <= 90% and coverage percent = 12%	0.701
	90% < OLTV <= 95% and coverage percent = 25%	0.408
	95% < OLTV <= 97% and coverage percent = 35%	0.226
	OLTV > 97% and coverage percent = 35%	0.184
30-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 12%	0.706
	85% < OLTV <= 90% and coverage percent = 25%	0.407
	90% < OLTV <= 95% and coverage percent = 30%	0.312
	95% < OLTV <= 97% and coverage percent = 35%	0.230
	OLTV > 97% and coverage percent = 35%	0.188
15/20-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.846
	85% < OLTV <= 90% and coverage percent = 12%	0.701
	90% < OLTV <= 95% and coverage percent = 16%	0.612
	95% < OLTV <= 97% and coverage percent = 18%	0.570
	OLTV > 97% and coverage percent = 20%	0.535
30-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.850
	85% < OLTV <= 90% and coverage percent = 12%	0.713
	90% < OLTV <= 95% and coverage percent = 16%	0.627
	95% < OLTV <= 97% and coverage percent = 18%	0.590
	OLTV > 97% and coverage percent = 20%	0.558

Table 8 to paragraph (e)(2)(v)(E): Credit Enhancement Multipliers for Performing Loans and Non-Modified RPLs Subject to Cancellable Mortgage Insurance

			Loan Age											
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
Loan with	>90%, <=95%	30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
Guide-level	>95%, <=97%	35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
Coverage	>97%	35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
Charter-level	>95%, <=97%	18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
Coverage	>97%	20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

Table 9 to paragraph (e)(2)(v)(E): Credit Enhancement Multipliers for Modified RPLs with 30-year Post-Modification Amortization That Is Subject to Cancellable Mortgage Insurance

			Months Since Last Modification											
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	25%	0.826	0.853	0.912	0.973	0.996	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.732	0.765	0.848	0.936	0.986	0.998	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	35%	0.630	0.673	0.762	0.865	0.945	0.980	0.996	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	12%	0.867	0.906	0.978	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	25%	0.551	0.568	0.653	0.839	0.968	0.992	0.998	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	30%	0.412	0.426	0.470	0.601	0.794	0.889	0.951	0.981	0.992	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.322	0.337	0.380	0.492	0.689	0.810	0.899	0.945	0.965	1.000	1.000	1.000
Coverage	>97%	35%	0.272	0.284	0.334	0.436	0.561	0.682	0.791	0.857	0.887	1.000	1.000	1.000
15/20 Year	>80%, <=85%	6%	0.997	0.998	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.988	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.887	0.904	0.943	0.983	0.997	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.854	0.874	0.918	0.966	0.992	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Coverage	>97%	20%	0.788	0.810	0.859	0.922	0.969	0.989	0.998	1.000	1.000	1.000	1.000	1.000
30 Year	>80%, <=85%	6%	0.934	0.954	0.989	0.999	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.780	0.788	0.832	0.922	0.985	0.996	0.999	1.000	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.679	0.685	0.711	0.784	0.889	0.940	0.973	0.989	0.995	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.642	0.647	0.669	0.732	0.836	0.900	0.947	0.971	0.981	1.000	1.000	1.000
Coverage	>97%	20%	0.597	0.602	0.623	0.672	0.740	0.805	0.864	0.898	0.914	1.000	1.000	1.000

Table 10 to paragraph (e)(2)(v)(E): Credit Enhancement Multipliers for Modified RPLs with 40-year Post-Modification Amortization That Is Subject to Cancellable Mortgage Insurance

			Months Since Last Modification											
	OLTV	Coverage Percent	<= 5	>5, <= 12	>12, <= 24	>24, <= 36	>36, <= 48	>48, <= 60	> 60, <= 72	> 72, <= 84	> 84, <= 96	>96, <=108	>108, <=120	>120
15/20 Year	>80%, <=85%	6%	0.997	0.998	0.999	0.999	0.999	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	25%	0.826	0.853	0.853	0.853	0.883	0.912	0.943	0.973	0.996	1.000	1.000	1.000
Guide-level	>95%, <=97%	35%	0.732	0.765	0.765	0.765	0.807	0.848	0.892	0.936	0.986	0.998	1.000	1.000
Coverage	>97%	35%	0.630	0.673	0.673	0.673	0.718	0.762	0.814	0.865	0.945	0.980	0.996	1.000
30 Year	>80%, <=85%	12%	0.867	0.884	0.928	0.962	0.994	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	25%	0.551	0.584	0.627	0.679	0.785	0.893	0.950	0.986	0.998	1.000	1.000	1.000
Loan with	>90%, <=95%	30%	0.412	0.440	0.456	0.484	0.547	0.654	0.743	0.845	0.932	0.969	0.992	1.000
Guide-level	>95%, <=97%	35%	0.322	0.351	0.369	0.391	0.449	0.535	0.631	0.746	0.873	0.925	0.965	1.000
Coverage	>97%	35%	0.272	0.295	0.314	0.353	0.410	0.462	0.515	0.607	0.756	0.826	0.887	1.000
15/20 Year	>80%, <=85%	6%	0.997	0.998	0.998	0.999	0.998	0.998	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.963	0.971	0.971	0.971	0.980	0.988	0.994	0.999	1.000	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.887	0.904	0.904	0.904	0.924	0.943	0.963	0.983	0.997	1.000	1.000	1.000
Charter-level	>95%, <=97%	18%	0.854	0.874	0.874	0.874	0.896	0.918	0.942	0.966	0.992	0.999	1.000	1.000
Coverage	>97%	20%	0.788	0.810	0.810	0.810	0.835	0.859	0.891	0.922	0.969	0.989	0.998	1.000
30 Year	>80%, <=85%	6%	0.934	0.943	0.964	0.981	0.997	0.999	1.000	1.000	1.000	1.000	1.000	1.000
Amortizing	>85%, <=90%	12%	0.780	0.795	0.819	0.845	0.896	0.948	0.976	0.993	0.999	1.000	1.000	1.000
Loan with	>90%, <=95%	16%	0.679	0.690	0.703	0.719	0.755	0.813	0.861	0.916	0.963	0.983	0.995	1.000
Charter-level	>95%, <=97%	18%	0.642	0.652	0.662	0.676	0.708	0.756	0.806	0.866	0.933	0.960	0.981	1.000
Coverage	>97%	20%	0.597	0.607	0.617	0.629	0.658	0.686	0.715	0.765	0.845	0.882	0.914	1.000

Table 11 to paragraph (e)(2)(v)(E): Credit Enhancement Multipliers for NPLs Subject to Cancellable Mortgage Insurance or Non-Cancellable Mortgage Insurance

Amortization Term / Coverage Type	Coverage Category	Credit Enhancement Multiplier
15/20-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.893
	85% < OLTV <= 90% and coverage percent = 12%	0.803
	90% < OLTV <= 95% and coverage percent = 25%	0.597
	95% < OLTV <= 97% and coverage percent = 35%	0.478
	OLTV > 97% and coverage percent = 35%	0.461
30-year with Guide-level Coverage	80% < OLTV <= 85% and coverage percent = 12%	0.813
	85% < OLTV <= 90% and coverage percent = 25%	0.618
	90% < OLTV <= 95% and coverage percent = 30%	0.530
	95% < OLTV <= 97% and coverage percent = 35%	0.490
	OLTV > 97% and coverage percent = 35%	0.505
15/20-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.893
	85% < OLTV <= 90% and coverage percent = 12%	0.803
	90% < OLTV <= 95% and coverage percent = 16%	0.775
	95% < OLTV <= 97% and coverage percent = 18%	0.678
	OLTV > 97% and coverage percent = 20%	0.663
30-year with Charter-level Coverage	80% < OLTV <= 85% and coverage percent = 6%	0.902
	85% < OLTV <= 90% and coverage percent = 12%	0.835
	90% < OLTV <= 95% and coverage percent = 16%	0.787
	95% < OLTV <= 97% and coverage percent = 18%	0.765
	OLTV > 97% and coverage percent = 20%	0.760

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(3) *Credit enhancement counterparty haircut*—(i) *Definitions.* For purposes of this paragraph (e)(3), the counterparty rating for a counterparty is:

(A) 1, if the Enterprise has determined that the counterparty is expected to perform all of its contractual obligations under foreseeable adverse events.

(B) 2, if the Enterprise has determined that there is negligible risk the counterparty may not be able to perform all of its contractual obligations under foreseeable adverse events.

(C) 3, if the Enterprise has determined that there is a slight risk the counterparty might not be able to perform all of its contractual obligations under foreseeable adverse events.

(D) 4, if the Enterprise has determined that foreseeable adverse events will have a greater impact on ''4'' rated counterparties than higher rated counterparties.

(E) 5, if the Enterprise has determined that the counterparty might not perform all of its contractual obligations under foreseeable adverse events.

(F) 6, if the Enterprise has determined that the counterparty is not expected to meet its contractual obligations under foreseeable adverse events.

(G) 7, if the Enterprise has determined that the counterparty's ability to perform its contractual obligations is questionable.

(H) 8, if the Enterprise has determined that the counterparty is in default on a material contractual obligation or is under a resolution proceeding or similar regulatory proceeding.

(ii) *Counterparty haircut.* The counterparty haircut is set forth on Table 12 to this paragraph (e)(3)(ii). For purposes of this paragraph (e)(3)(ii), RPL means either a modified RPL or a non-modified RPL.

Table 12 to paragraph (e)(3)(ii): Counterparty Haircuts

	Mortgage Concentration Risk: Not High			High Mortgage Concentration Risk and Approved Insurer			High Mortgage Concentration Risk and Not an Approved Insurer		
Counterparty Rating	Performing Loans and RPLs		NPLs	Performing Loans and RPLs		NPLs	Performing Loans and RPLs		NPLs
	30 Year Product	20/15 Year Product		30 Year Product	20/15 Year Product		30 Year Product	20/15 Year Product	
1	1.8%	1.3%	0.6%	2.3%	1.6%	0.7%	2.8%	2.0%	0.9%
2	4.5%	3.5%	2.0%	5.9%	4.5%	2.6%	7.3%	5.6%	3.2%
3	5.2%	4.0%	2.4%	6.7%	5.1%	3.1%	8.3%	6.4%	3.9%
4	11.4%	9.5%	6.9%	14.2%	11.8%	8.5%	17.2%	14.3%	10.4%
5	14.8%	12.7%	9.9%	17.8%	15.2%	11.9%	20.9%	18.0%	14.0%
6	21.2%	19.1%	16.4%	24.0%	21.7%	18.6%	26.8%	24.2%	20.8%
7	40.0%	38.2%	35.7%	42.0%	40.1%	37.5%	43.7%	41.7%	39.0%
8	47.6%	46.6%	45.3%	47.6%	46.6%	45.3%	47.6%	46.6%	45.3%

§ 1240.34 Multifamily mortgage exposures.

(a) *Definitions.* Subject to any additional instructions set forth on Table 1 to this paragraph (a), for purposes of this section:

Acquisition debt-service-coverage ratio (acquisition DSCR) means, with respect to a multifamily mortgage exposure, the amount equal to:

(i) The net operating income (NOI) (or, if not available, the net cash flow) of the multifamily property that secures the multifamily mortgage exposure, at the time of the acquisition by the Enterprise (or, if not available, at the time of the underwriting or origination) of the multifamily mortgage exposure; divided by

(ii) The scheduled periodic payment on the multifamily mortgage exposure (or, if interest-only, fully amortizing payment), at the time of the acquisition by the Enterprise (or, if not available, at the time of the origination) of the multifamily mortgage exposure.

Acquisition loan-to-value (acquisition LTV) means, with respect to a multifamily mortgage exposure, the amount, determined as of the time of the acquisition by the Enterprise (or, if not available, at the time of the underwriting or origination) of the multifamily mortgage exposure, equal to:

(i) The unpaid principal balance of the multifamily mortgage exposure; divided by

(ii) The value of the multifamily property securing the multifamily mortgage exposure.

Debt-service-coverage ratio (DSCR) means, with respect to a multifamily mortgage exposure:

(i) The acquisition DSCR of the multifamily mortgage exposure if the loan age of the multifamily mortgage exposure is less than 6; or

(ii) The MTMDSCR of the multifamily mortgage exposure.

Interest-only (IO) means a multifamily mortgage exposure that requires only payment of interest without any principal amortization during all or part of the loan term.

Loan age means the number of scheduled payment dates since the origination of the multifamily mortgage exposure.

Loan term means the number of years until final loan payment (which may be a balloon payment) under the terms of a multifamily mortgage exposure.

LTV means, with respect to a multifamily mortgage exposure;

(i) The acquisition LTV of the multifamily mortgage exposure if the loan age of the multifamily mortgage exposure is less than 6, or

(ii) The MTMLTV of the multifamily mortgage exposure.

Mark-to-market debt-service coverage ratio (MTMDSCR) means, with respect to a multifamily mortgage exposure, the amount equal to—

(i) The net operating income (or, if not available, the net cash flow) of the multifamily property that secures the multifamily mortgage exposure, as reported on the most recently available property operating statement; divided by

(ii) The scheduled periodic payment on the multifamily mortgage exposure (or, for interest-only, fully amortizing payment), as reported on the most recently available property operating statement.

Mark-to-market loan-to-value (MTMLTV) means, with respect to a multifamily mortgage exposure, the amount calculated by adjusting the acquisition LTV using a multifamily property value index or property value estimated based on net operating income and capitalization rate indices.

Multifamily adjustable-rate exposure means a multifamily mortgage exposure that is not, at that time, a multifamily fixed-rate exposure.

Multifamily fixed-rate exposure means a multifamily mortgage exposure that, at that time, has an interest rate that may not then increase or decrease based on a change in a reference index or other methodology, including:

(i) A multifamily mortgage exposure that has an interest rate that is fixed over the life of the loan; and

(ii) A multifamily mortgage exposure that has an interest rate that may increase or decrease in the future, but is fixed at that time.

Net cash flow means, with respect to a multifamily mortgage exposure, the amount equal to:

(i) The net operating income of the multifamily mortgage exposure; minus

(ii) Reserves for capital improvements; minus

(iii) Other expenses not included in net operating income required for the proper operation of the multifamily property securing the multifamily mortgage exposure, including any commissions paid to leasing agents in securing renters and special improvements to the property to accommodate the needs of certain renters.

Net operating income means, with respect to a multifamily mortgage exposure, the amount equal to:

(i) The rental income generated by the multifamily property securing the multifamily mortgage exposure; minus

(ii) The vacancy and property operating expenses of the multifamily property securing the multifamily mortgage exposure.

Original amortization term means the number of years, determined as of the time of the origination of a multifamily mortgage exposure, that it would take a borrower to pay a multifamily mortgage exposure completely if the borrower only makes the scheduled payments, and without making any balloon payment.

Original loan size means the dollar amount of the unpaid principal balance of a multifamily mortgage exposure at origination.

Payment performance means the payment status of history of a multifamily mortgage exposure, assigned pursuant to the instructions set forth on Table 1 to this paragraph (a).

Supplemental mortgage exposure means any multifamily fixed-rate exposure or multifamily adjustable-rate exposure that is originated after the origination of a multifamily mortgage exposure that is secured by all or part of the same multifamily property.

Unpaid principal balance (UPB) means the outstanding loan amount of a multifamily mortgage exposure.

Table 1 to paragraph (a): Permissible Values and Additional Instructions

Defined Term	Permissible Values	Additional Instructions
Acquisition DSCR	Greater than or equal to 0.	Origination DSCR if negative or unable to determine. If origination DSCR is unavailable, use underwriting DSCR. If underwriting DSCR is unavailable, use 1.00.
Acquisition LTV	Greater than or equal to 0.	Origination LTV if negative or unable to determine. If origination LTV is unavailable, use underwriting LTV. If underwriting LTV is unavailable, use 100 percent.
Interest-only	Yes, no.	Yes if unable to determine.
Loan Term	Non-negative integer in years.	11 years if negative or unable to determine.
MTMDSCR	Greater than or equal to 0.	If the MTMDSCR is unavailable, the last observed DSCR can be marked to market using a property NOI index or an NOI estimate based on rent and expense indices. If the index is not sufficiently granular, either because of its frequency or geography, or with respect to a certain multifamily property type, use a more geographically broad index or a recently estimated mark-to-market value.
MTMLTV	Greater than or equal to 0.	If the MTMLTV is unavailable, mark to market using an index. If the index is not sufficiently granular, either because of its frequency or geography or with respect to a certain multifamily property type, use a more geographically broad index or a recently estimated mark-to-market value.
Net Operating Income (NOI) / Net Cash Flow (NCF)	Greater than or equal to 0.	Infer using origination LTV or origination DSCR if NOI/NCF is unavailable. Alternatively, infer using actual MTMLTV or actual MTMDSCR.
Original Amortization Term	Non-negative integer in years.	31 years if negative or unable to determine.
Original Loan Size	Non-negative dollar value.	$3,000,000 if negative or unable to determine
Payment Performance	Performing, delinquent 60 days or more, re-performing (without modification), modified.	Modified if unable to determine.
Special Product	Not a special product, student housing, rehab/value-add/lease-up, supplemental mortgage exposure.	Rehab/value-add/lease-up if unable to determine.
UPB	UPB > $0	$100,000,000 if negative or unable to determine.

(b) *Risk weight*—(1) *In general.* Subject to paragraphs (b)(2) and (b)(3) of this section, an Enterprise must assign a risk weight to a multifamily mortgage exposure equal to:

(i) The base risk weight for the multifamily mortgage exposure as determined under paragraph (c) of this section; multiplied by

(ii) The combined risk multiplier for the multifamily mortgage exposure as determined under paragraph (d) of this section.

(2) *Minimum risk weight.* Notwithstanding the risk weight determined under paragraph (b)(1) of this section, the risk weight assigned to a multifamily mortgage exposure may not be less than 15 percent.

(3) *Loan groups.* If a multifamily property that secures a multifamily mortgage exposure also secures one or more supplemental mortgage exposures:

(i) A multifamily mortgage exposure-specific base risk weight must be determined under paragraph (c) of this section using for each of these multifamily mortgage exposures a single DSCR and single LTV, both calculated as if all of the multifamily mortgage exposures secured by the multifamily property were consolidated into a single multifamily mortgage exposure; and

(ii) A multifamily mortgage exposure-specific combined risk multiplier must be determined under paragraph (d) of this section based on the risk characteristics of the multifamily mortgage exposure (except with respect to the loan size multiplier, which would be determined using the aggregate unpaid principal balance of these multifamily mortgage exposures).

(c) *Base risk weight*—(1) *Multifamily fixed-rate exposure.* The base risk weight for a multifamily fixed-rate exposure is set forth on Table 2 to this paragraph (c)(1).

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Table 2 to paragraph (c)(1): Multifamily Fixed-rate Exposure

		LTV									
		<=35%	> 35%, <=45%	> 45%, <=55%	> 55%, <=65%	> 65%, <=70%	> 70%, <=75%	> 75%, <=80%	> 80%, <=90%	> 90%, <=100%	>100%
DSCR	<1.00	52%	60%	76%	109%	125%	140%	153%	166%	172%	182%
	>= 1.00, <1.15	45%	52%	65%	92%	105%	118%	129%	140%	145%	153%
	>=1.15, < 1.20	40%	46%	58%	81%	93%	103%	112%	122%	127%	134%
	>=1.20, < 1.25	37%	42%	52%	72%	83%	92%	97%	107%	112%	119%
	>=1.25, < 1.30	33%	38%	47%	65%	74%	81%	86%	94%	99%	105%
	>=1.30, < 1.35	31%	35%	43%	59%	66%	71%	76%	84%	88%	93%
	>=1.35, < 1.50	29%	32%	39%	54%	59%	64%	69%	76%	80%	86%
	>=1.50, < 1.65	25%	27%	31%	39%	43%	47%	51%	57%	62%	70%
	>=1.65, < 1.80	22%	23%	26%	31%	34%	37%	41%	47%	53%	61%
	>=1.80, < 1.95	16%	17%	19%	24%	26%	29%	32%	41%	47%	56%
	>=1.95, < 2.10	15%	15%	16%	20%	23%	26%	28%	37%	44%	54%
	>=2.10, < 2.25	13%	14%	15%	19%	21%	24%	25%	36%	42%	53%
	>=2.25	13%	13%	14%	18%	20%	23%	24%	35%	42%	52%

(2) *Multifamily adjustable-rate exposure.* The base risk weight for a multifamily adjustable-rate exposure is set forth on Table 3 to this paragraph (c)(2).

Table 3 to paragraph (c)(2): Multifamily Adjustable-rate Exposure

		LTV									
		<=35%	> 35%, <=45%	> 45%, <=55%	> 55%, <=65%	> 65%, <=70%	> 70%, <=75%	> 75%, <=80%	> 80%, <=90%	> 90%, <=100%	>100%
DSCR	<1.00	81%	86%	93%	133%	153%	172%	189%	211%	229%	255%
	>=1.00, <1.25	71%	75%	80%	113%	129%	145%	158%	178%	193%	215%
	>=1.25, < 1.30	63%	67%	71%	100%	114%	127%	138%	156%	169%	188%
	>=1.30, < 1.36	57%	60%	63%	88%	101%	113%	120%	136%	149%	168%
	>=1.36, < 1.42	51%	54%	57%	79%	90%	99%	106%	120%	131%	148%
	>=1.42, < 1.47	45%	49%	51%	71%	80%	86%	93%	107%	116%	131%
	>=1.47, < 1.53	37%	42%	47%	64%	71%	77%	84%	97%	106%	120%
	>=1.53, < 1.70	30%	33%	37%	47%	51%	56%	63%	72%	83%	98%
	>=1.70, < 1.87	23%	26%	30%	36%	40%	45%	51%	60%	70%	86%
	>=1.87, < 2.03	19%	21%	22%	28%	31%	35%	40%	52%	62%	79%
	>=2.03, < 2.21	17%	18%	19%	24%	26%	31%	34%	47%	58%	75%
	>=2.21, < 2.38	16%	17%	17%	22%	24%	28%	31%	45%	56%	73%
	>=2.38	16%	16%	16%	21%	23%	27%	30%	44%	55%	72%

(d) *Combined risk multiplier.* The combined risk multiplier for a multifamily mortgage exposure is equal to the product of each of the applicable risk multipliers set forth on Table 4 to this paragraph (d).

Table 4 to paragraph (d): Multifamily Risk Multipliers

Risk Factor	Value or Range	Risk Multiplier
Payment Performance	Performing	1.00
	Delinquent more than 60 days	1.10
	Re-performing (without modification)	1.10
	Modified	1.20
Interest-only	No	1.00
	Yes (during the interest-only period)	1.10
Loan Term	Loan term <= 1Yr	0.70
	1Yr < loan term <= 2Yr	0.75
	2Yr < loan term <= 3Yr	0.80
	3Yr < loan term <= 4Yr	0.85
	4Yr < loan term <= 5Yr	0.90
	5Yr < loan term <= 7Yr	0.95
	7Yr < loan term <= 10Yr	1.00
	Loan term > 10Yr	1.15
Original Amortization Term	Original amortization term <= 20Yr	0.70
	20Yr < original amortization term <= 25Yr	0.80
	25Yr < original amortization term <= 30Yr	1.00
	Original amortization term > 30Yr	1.10
Original Loan Size (in millions)	Loan size <= $2m	1.45
	$2m < loan size <= $3m	1.35
	$3m < loan size <= $4m	1.25
	$4m < loan size <= $5m	1.15
	$5m < loan size <= $6m	1.08
	$6m < loan size <= $7m	1.02
	$7m < loan size <= $8m	0.96
	$8m < loan size <= $9m	0.92
	$9m < loan size <= $10m	0.88
	$10m < loan size <= $11m	0.86
	$11m < loan size <= $12m	0.84
	$12m < loan size <= $13m	0.82
	$13m < loan size <= $14m	0.81
	$14m < loan size <= $15m	0.81
	$15m < loan size <= $16m	0.80
	$16m < loan size <= $17m	0.80
	$17m < loan size <= $18m	0.80
	$18m < loan size <= $19m	0.80
	$19m < loan size <= $20m	0.80
	$20m < loan size <= $21m	0.80
	$21m < loan size <= $22m	0.80
	$22m < loan size <= $23m	0.79
	$23m < loan size <= $24m	0.78
	$24m < loan size <= $25m	0.76
	Loan size >$25m	0.70
Special Products	Not a special product	1.00
	Student housing	1.15
	Rehab/value-add/lease-up	1.25

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§ 1240.35 Off-balance sheet exposures.

(a) *General.* (1) An Enterprise must calculate the exposure amount of an off-balance sheet exposure using the credit conversion factors (CCFs) in paragraph (b) of this section.

(2) Where an Enterprise commits to provide a commitment, the Enterprise may apply the lower of the two applicable CCFs.

(3) Where an Enterprise provides a commitment structured as a syndication or participation, the Enterprise is only required to calculate the exposure amount for its pro rata share of the commitment.

(4) Where an Enterprise provides a commitment or enters into a repurchase agreement and such commitment or repurchase agreement, the exposure amount shall be no greater than the maximum contractual amount of the commitment, repurchase agreement, or credit-enhancing representation and warranty, as applicable.

(b) *Credit conversion factors*—(1) *Zero percent CCF.* An Enterprise must apply a zero percent CCF to the unused portion of a commitment that is unconditionally cancelable by the Enterprise.

(2) *20 percent CCF.* An Enterprise must apply a 20 percent CCF to the amount of commitments with an original maturity of one year or less that are not unconditionally cancelable by the Enterprise.

(3) *50 percent CCF.* An Enterprise must apply a 50 percent CCF to the amount of commitments with an original maturity of more than one year that are not unconditionally cancelable by the Enterprise.

(4) *100 percent CCF.* An Enterprise must apply a 100 percent CCF to the amount of the following off-balance sheet items and other similar transactions:

(i) Guarantees;

(ii) Repurchase agreements (the off-balance sheet component of which equals the sum of the current fair values of all positions the Enterprise has sold subject to repurchase);

(iii) Off-balance sheet securities lending transactions (the off-balance sheet component of which equals the sum of the current fair values of all positions the Enterprise has lent under the transaction);

(iv) Off-balance sheet securities borrowing transactions (the off-balance sheet component of which equals the sum of the current fair values of all non-cash positions the Enterprise has posted as collateral under the transaction); and

(v) Forward agreements.

§ 1240.36 Derivative contracts.

An Enterprise must determine its risk-weighted assets for OTC derivative contracts as provided under 12 CFR 217.34, substituting ''Enterprise'' for ''Board-regulated institution''.

§ 1240.37 Cleared transactions.

An Enterprise must determine its risk-weighted assets for cleared transactions as provided under 12 CFR 217.35, substituting ''Enterprise'' for ''Board-regulated institution.''

§ 1240.38 Guarantees and credit derivatives: Substitution treatment.

An Enterprise may recognize the credit risk mitigation benefits of an eligible guarantee or eligible credit derivative by substituting the risk weight associated with the protection provider for the risk weight assigned to an exposure, as provided under 12 CFR 217.36, substituting ''Enterprise'' for ''Board-regulated institution.''

§ 1240.39 Collateralized transactions.

An Enterprise may recognize the risk-mitigating effects of financial collateral as provided under 12 CFR 217.37, substituting ''Enterprise'' for ''Board-regulated institution.''

Risk-Weighted Assets for Unsettled Transactions

§ 1240.40 Unsettled transactions.

An Enterprise must determine its risk-weighted assets for unsettled transactions under 12 CFR 217.38, substituting ''Enterprise'' for ''Board-regulated institution.''

Risk-Weighted Assets for CRT and Other Securitization Exposures

§ 1240.41 Operational requirements for CRT and other securitization exposures.

(a) *Operational criteria for traditional securitizations.* An Enterprise that transfers exposures it has purchased or otherwise acquired to a securitization SPE or other third party in connection with a traditional securitization may exclude the exposures from the calculation of its risk-weighted assets only if each condition in this section is satisfied. An Enterprise that meets these conditions must hold risk-based capital against any credit risk it retains in connection with the securitization. An Enterprise that fails to meet these conditions must hold risk-based capital against the transferred exposures as if they had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the transaction. The conditions are:

(1) The exposures are not reported on the Enterprise's consolidated balance sheet under GAAP;

(2) The Enterprise has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls; and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

(b) *Operational criteria for synthetic securitizations.* For synthetic securitizations, an Enterprise may recognize for risk-based capital purposes the use of a credit risk mitigant to hedge underlying exposures only if each condition in this paragraph (b) is satisfied. An Enterprise that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the synthetic securitization. An Enterprise that fails to meet these conditions or chooses not to recognize the credit risk mitigant for purposes of this section must instead hold risk-based capital against the underlying exposures as if they had not been synthetically securitized. The conditions are:

(1) The credit risk mitigant is:

(i) Financial collateral;

(ii) A guarantee that meets all criteria as set forth in the definition of ''eligible guarantee'' in § 1240.2, except for the criteria in paragraph (3) of that definition; or

(iii) A credit derivative that meets all criteria as set forth in the definition of ''eligible credit derivative'' in § 1240.2, except for the criteria in paragraph (3) of the definition of ''eligible guarantee'' in § 1240.2.

(2) The Enterprise transfers credit risk associated with the underlying exposures to one or more third parties, and the terms and conditions in the credit risk mitigants employed do not include provisions that:

(i) Allow for the termination of the credit protection due to deterioration in the credit quality of the underlying exposures;

(ii) Require the Enterprise to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(iii) Increase the Enterprise's cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the Enterprise in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the Enterprise after the inception of the securitization;

(3) The Enterprise obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions; and

(4) Any clean-up calls relating to the securitization are eligible clean-up calls.

(c) *Operational criteria for credit risk transfers.* For credit risk transfers, an Enterprise may recognize for risk-based capital purposes, the use of a credit risk transfer only if each condition in this paragraph (c) is satisfied. An Enterprise that meets these conditions must hold risk-based capital against any credit risk of the exposures it retains in connection with the credit risk transfer. An Enterprise that fails to meet these conditions or chooses not to recognize the credit risk transfer for purposes of this section must instead hold risk-based capital against the underlying exposures as if they had not been subject to the credit risk transfer. The conditions are:

(1) The credit risk transfer is an eligible CRT structure.

(2) The Enterprise transfers credit risk associated with the underlying exposures to one or more third parties, and the terms and conditions in the credit risk transfer employed do not include provisions that:

(i) Allow for the termination of the credit risk transfer due to deterioration in the credit quality of the underlying exposures;

(ii) Require the Enterprise to alter or replace the underlying exposures to improve the credit quality of the underlying exposures;

(iii) Increase the Enterprise's cost of credit protection in response to deterioration in the credit quality of the underlying exposures;

(iv) Increase the yield payable to parties other than the Enterprise in response to a deterioration in the credit quality of the underlying exposures; or

(v) Provide for increases in a retained first loss position or credit enhancement provided by the Enterprise after the inception of the credit risk transfer;

(3) The Enterprise obtains a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk transfer in all relevant jurisdictions; and

(4) Any clean-up calls relating to the credit risk transfer are eligible clean-up calls.

(5) The Enterprise includes in its periodic disclosures under the Federal securities laws, or in other appropriate public disclosures, a reasonably detailed description of—

(i) The material recourse or other risks that might reduce the effectiveness of the credit risk transfer in transferring the credit risk on the underlying exposures to third parties; and

(ii) Each condition under paragraph (a) of this section (governing traditional securitizations) or paragraph (b) of this section (governing synthetic securitizations) that is not satisfied by the credit risk transfer and the reasons that each such condition is not satisfied.

(d) *Due diligence requirements for securitization exposures.* (1) Except for exposures that are deducted from common equity tier 1 capital and exposures subject to § 1240.42(h), if an Enterprise is unable to demonstrate to the satisfaction of FHFA a comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure, the Enterprise must assign the securitization exposure a risk weight of 1,250 percent. The Enterprise's analysis must be commensurate with the complexity of the securitization exposure and the materiality of the exposure in relation to its capital.

(2) An Enterprise must demonstrate its comprehensive understanding of a securitization exposure under paragraph (c)(1) of this section, for each securitization exposure by:

(i) Conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure, and documenting such analysis within three business days after acquiring the exposure, considering:

(A) Structural features of the securitization that would materially impact the performance of the exposure, for example, the contractual cash flow waterfall, waterfall-related triggers, credit enhancements, liquidity enhancements, fair value triggers, the performance of organizations that service the exposure, and deal-specific definitions of default;

(B) Relevant information regarding the performance of the underlying credit exposure(s), for example, the percentage of loans 30, 60, and 90 days past due; default rates; prepayment rates; loans in foreclosure; property types; occupancy; average credit score or other measures of creditworthiness; average LTV ratio; and industry and geographic diversification data on the underlying exposure(s);

(C) Relevant market data of the securitization, for example, bid-ask spread, most recent sales price and historic price volatility, trading volume, implied market rating, and size, depth and concentration level of the market for the securitization; and

(D) For resecuritization exposures, performance information on the underlying securitization exposures, for example, the issuer name and credit quality, and the characteristics and performance of the exposures underlying the securitization exposures; and

(ii) On an on-going basis (no less frequently than quarterly), evaluating, reviewing, and updating as appropriate the analysis required under paragraph (c)(1) of this section for each securitization exposure.

§ 1240.42 Risk-weighted assets for CRT and other securitization exposures.

(a) *Securitization risk weight approaches.* Except as provided elsewhere in this section or in § 1240.41:

(1) An Enterprise must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from a securitization and apply a 1,250 percent risk weight to the portion of a CEIO that does not constitute after-tax gain-on-sale.

(2) If a securitization exposure does not require deduction under paragraph (a)(1) of this section, an Enterprise may assign a risk weight to the securitization exposure either using the simplified supervisory formula approach (SSFA) in accordance with §§ 1240.43(a) through 1240.43(d) for a securitization exposure that is not a retained CRT exposure or an acquired CRT exposure or using the credit risk transfer approach (CRTA) in accordance with § 1240.44 for a retained CRT exposure, and in either case, subject to the limitation under paragraph (e) of this section.

(3) If a securitization exposure does not require deduction under paragraph (a)(1) of this section and the Enterprise cannot, or chooses not to apply the SSFA or the CRTA to the exposure, the Enterprise must assign a risk weight to the exposure as described in § 1240.45.

(4) If a securitization exposure is a derivative contract (other than protection provided by an Enterprise in the form of a credit derivative) that has a first priority claim on the cash flows from the underlying exposures (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments), an Enterprise may choose to set the risk-weighted asset amount of the exposure equal to the amount of the exposure as determined in paragraph (c) of this section.

(b) *Total risk-weighted assets for securitization exposures.* An Enterprise's total risk-weighted assets for securitization exposures equals the sum of the risk-weighted asset amount for securitization exposures that the Enterprise risk weights under §§ 1240.41(d), 1240.42(a)(1), 1240.43, 1240.44, or 1240.45, and paragraphs (e) through (h) of this section, as applicable.

(c) *Exposure amount of a CRT or other securitization exposure*—(1) *On-balance sheet securitization exposures.* Except as provided for retained CRT exposures in § 1240.44(f), the exposure amount of an on-balance sheet securitization exposure (excluding a repo-style transaction, eligible margin loan, OTC derivative contract, or cleared transaction) is equal to the carrying value of the exposure.

(2) *Off-balance sheet securitization exposures.* Except as provided in paragraph (h) of this section or as provided for retained CRT exposures in § 1240.44(f), the exposure amount of an off-balance sheet securitization exposure that is not a repo-style transaction, eligible margin loan, cleared transaction (other than a credit derivative), or an OTC derivative contract (other than a credit derivative) is the notional amount of the exposure.

(3) *Repo-style transactions, eligible margin loans, and derivative contracts.* The exposure amount of a securitization exposure that is a repo-style transaction, eligible margin loan, or derivative contract (other than a credit derivative) is the exposure amount of the transaction as calculated under § 1240.36 or § 1240.39, as applicable.

(d) *Overlapping exposures.* If an Enterprise has multiple securitization exposures that provide duplicative coverage to the underlying exposures of a securitization, the Enterprise is not required to hold duplicative risk-based capital against the overlapping position. Instead, the Enterprise may apply to the overlapping position the applicable risk-based capital treatment that results in the highest risk-based capital requirement.

(e) *Implicit support.* If an Enterprise provides support to a securitization (including a CRT) in excess of the Enterprise's contractual obligation to provide credit support to the securitization (implicit support):

(1) The Enterprise must include in risk-weighted assets all of the underlying exposures associated with the securitization as if the exposures had not been securitized and must deduct from common equity tier 1 capital any after-tax gain-on-sale resulting from the securitization; and

(2) The Enterprise must disclose publicly:

(i) That it has provided implicit support to the securitization; and

(ii) The risk-based capital impact to the Enterprise of providing such implicit support.

(f) *Interest-only mortgage-backed securities.* Regardless of any other provisions in this subpart, the risk weight for a non-credit-enhancing interest-only mortgage-backed security may not be less than 100 percent.

(g) *Nth-to-default credit derivatives*—(1) *Protection provider.* An Enterprise may assign a risk weight using the SSFA in § 1240.43 to an nth-to-default credit derivative in accordance with this paragraph (g). An Enterprise must determine its exposure in the nth-to-default credit derivative as the largest notional amount of all the underlying exposures.

(2) *Attachment and detachment points.* For purposes of determining the risk weight for an nth-to-default credit derivative using the SSFA, the Enterprise must calculate the attachment point and detachment point of its exposure as follows:

(i) The attachment point (parameter *A*) is the ratio of the sum of the notional amounts of all underlying exposures that are subordinated to the Enterprise's exposure to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one. In the case of a first-to-default credit derivative, there are no underlying exposures that are subordinated to the Enterprise's exposure. In the case of a second-or-subsequent-to-default credit derivative, the smallest $(n-1)$ notional amounts of the underlying exposure(s) are subordinated to the Enterprise's exposure.

(ii) The detachment point (parameter *D*) equals the sum of parameter *A* plus the ratio of the notional amount of the Enterprise's exposure in the nth-to-default credit derivative to the total notional amount of all underlying exposures. The ratio is expressed as a decimal value between zero and one.

(3) *Risk weights.* An Enterprise that does not use the SSFA to determine a risk weight for its nth-to-default credit derivative must assign a risk weight of 1,250 percent to the exposure.

(4) *Protection purchaser*—(i) *First-to-default credit derivatives.* An Enterprise that obtains credit protection on a group of underlying exposures through a first-to-default credit derivative that meets the rules of recognition of 12 CFR 217.36(b) must determine its risk-based capital requirement for the underlying exposures as if the Enterprise synthetically securitized the underlying exposure with the smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures. An Enterprise must calculate a risk-based capital requirement for counterparty credit risk according to 12 CFR 217.34 for a first-to-default credit derivative that does not meet the rules of recognition of 12 CFR 217.36(b).

(ii) *Second-or-subsequent-to-default credit derivatives.* (A) An Enterprise that obtains credit protection on a group of underlying exposures through a nth-to-default credit derivative that meets the rules of recognition of 12 CFR 217.36(b) (other than a first-to-default credit derivative) may recognize the credit risk mitigation benefits of the derivative only if:

(1) The Enterprise also has obtained credit protection on the same underlying exposures in the form of first-through-$(n-1)$-to-default credit derivatives; or

(2) If $n-1$ of the underlying exposures have already defaulted.

(B) If an Enterprise satisfies the requirements of paragraph (i)(4)(ii)(A) of this section, the Enterprise must determine its risk-based capital requirement for the underlying exposures as if the Enterprise had only synthetically securitized the underlying exposure with the nth smallest risk-weighted asset amount and had obtained no credit risk mitigant on the other underlying exposures.

(C) An Enterprise must calculate a risk-based capital requirement for counterparty credit risk according to 12 CFR 217.34 for a nth-to-default credit derivative that does not meet the rules of recognition of 12 CFR 217.36(b).

(h) *Guarantees and credit derivatives other than nth-to-default credit derivatives*—(1) *Protection provider.* For a guarantee or credit derivative (other than an nth-to-default credit derivative) provided by an Enterprise that covers the full amount or a pro rata share of a securitization exposure's principal and interest, the Enterprise must risk weight the guarantee or credit derivative as if it holds the portion of the reference exposure covered by the guarantee or credit derivative.

(2) *Protection purchaser.* (i) An Enterprise that purchases a guarantee or OTC credit derivative (other than an nth-to-default credit derivative) that is recognized under § 1240.46 as a credit risk mitigant (including via collateral recognized under § 1240.39) is not required to compute a separate counterparty credit risk capital requirement under § 1240.31, in accordance with 12 CFR 217.34(c).

(ii) If an Enterprise cannot, or chooses not to, recognize a purchased credit derivative as a credit risk mitigant under § 1240.46, the Enterprise must determine the exposure amount of the credit derivative under § 1240.36.

(A) If the Enterprise purchases credit protection from a counterparty that is not a securitization SPE, the Enterprise must determine the risk weight for the exposure according to this subpart D.

(B) If the Enterprise purchases the credit protection from a counterparty that is a securitization SPE, the Enterprise must determine the risk weight for the exposure according to section § 1240.42, including § 1240.42(a)(4) for a credit derivative that has a first priority claim on the cash flows from the underlying exposures of the securitization SPE (notwithstanding amounts due under interest rate or currency derivative contracts, fees due, or other similar payments).

§ 1240.43 Simplified supervisory formula approach (SSFA).

(a) *General requirements for the SSFA.* To use the SSFA to determine the risk weight for a securitization exposure, an Enterprise must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data; if the contracts governing the underlying exposures of the securitization require payments on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. An Enterprise that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the exposure.

(b) *SSFA parameters.* To calculate the risk weight for a securitization exposure using the SSFA, an Enterprise must have accurate information on the following five inputs to the SSFA calculation:

(1) K_G is the weighted-average (with unpaid principal used as the weight for each exposure) adjusted total capital requirement of the underlying exposures calculated using this subpart. K_G is expressed as a decimal value between zero and one (that is, an average risk weight of 100 percent represents a value of KG equal to 0.08).

(2) Parameter *W* is expressed as a decimal value between zero and one. Parameter *W* is the ratio of the sum of the dollar amounts of any underlying exposures of the securitization that meet any of the criteria as set forth in paragraphs (b)(2)(i) through (vi) of this section to the balance, measured in dollars, of underlying exposures:

(i) Ninety days or more past due;

(ii) Subject to a bankruptcy or insolvency proceeding;

(iii) In the process of foreclosure;

(iv) Held as real estate owned;

(v) Has contractually deferred payments for 90 days or more, other than principal or interest payments deferred on:

(A) Federally-guaranteed student loans, in accordance with the terms of those guarantee programs; or

(B) Consumer loans, including non-federally-guaranteed student loans, provided that such payments are deferred pursuant to provisions included in the contract at the time funds are disbursed that provide for period(s) of deferral that are not initiated based on changes in the creditworthiness of the borrower; or

(vi) Is in default.

(3) Parameter *A* is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Except as provided in § 1240.42(g) for nth-to-default credit derivatives, parameter *A* equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the Enterprise to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the Enterprise's securitization exposure may be included in the calculation of parameter *A* to the extent that cash is present in the account. Parameter *A* is expressed as a decimal value between zero and one.

(4) Parameter *D* is the detachment point for the exposure, which represents the threshold at which credit losses of principal allocated to the exposure would result in a total loss of principal. Except as provided in § 1240.42(g) for nth-to-default credit derivatives, parameter *D* equals parameter *A* plus the ratio of the current dollar amount of the securitization exposures that are *pari passu* with the exposure (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter *D* is expressed as a decimal value between zero and one.

(5) A supervisory calibration parameter, *p,* is equal to 0.5 for securitization exposures that are not resecuritization exposures and equal to 1.5 for resecuritization exposures (except *p* is equal to 0.5 for resecuritization exposures secured by MBS guaranteed by an Enterprise).

(c) *Mechanics of the SSFA.* K_G and *W* are used to calculate K_A, the augmented value of K_G, which reflects the observed credit quality of the underlying exposures. K_A is defined in paragraph (d) of this section. The values of parameters *A* and *D,* relative to K_A determine the risk weight assigned to a securitization exposure as described in paragraph (d) of this section. The risk weight assigned to a securitization exposure, or portion of a securitization exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph (c) or paragraph (d) of this section and a risk weight of 20 percent.

(1) When the detachment point, parameter *D,* for a securitization exposure is less than or equal to K_A, the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter *A,* for a securitization exposure is greater than or equal to K_A, the Enterprise must calculate the risk weight in accordance with paragraph (d) of this section.

(3) When *A* is less than K_A and *D* is greater than K_A, the risk weight is a weighted-average of 1,250 percent and 1,250 percent times K_{SSFA} calculated in accordance with paragraph (d) of this section. For the purpose of this weighted-average calculation:

(i) The weight assigned to 1,250 percent equals

$$\frac{K_A - A}{D - A}.$$

(ii) The weight assigned to 1,250 percent times K_{SSFA} equals

$$\frac{D - K_A}{D - A}.$$

(iii) The risk weight will be set equal to:

$$RW = \left[\left(\frac{K_A - A}{D - A}\right) * 1{,}250\ percent\right] + \left[\left(\frac{D - K_A}{D - A}\right) * 1{,}250\ percent * K_{SSFA}\right]$$

(d) *SFA equation.* (1) The Enterprise must define the following parameters:

$$K_A = (1 - W) * K_G + (0.5 * W)$$

$$a = -\frac{1}{\rho * K_A}$$

$$u = D - K_A$$

$$l = \max(A - K_A, 0)$$

e = 2.71828, the base of the natural logarithms.

(2) Then the Enterprise must calculate according to the following equation:

$$K_{SSFA} = \frac{e^{a*u} - e^{a*l}}{a * (u - l)}$$

(3) The risk weight for the exposure (expressed as a percent) is equal to K_{SSFA} * 1,250.

(e) *Limitations.* Notwithstanding any other provision of this section, an Enterprise must assign a risk weight of not less than 20 percent to a securitization exposure.

§ 1240.44 Credit risk transfer approach (CRTA).

(a) *General requirements for the CRTA.* To use the CRTA to determine the risk weighted assets for a retained CRT exposure, an Enterprise must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data; if the contracts governing the underlying exposures of the credit risk transfer require payments on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. An Enterprise that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the retained CRT exposure.

(b) *CRTA parameters.* To calculate the risk weighted assets for a retained CRT exposure, an Enterprise must have accurate information on the following ten inputs to the CRTA calculation.

(1) Parameter *A* is the attachment point for the exposure, which represents the threshold at which credit losses will first be allocated to the exposure. Parameter *A* equals the ratio of the current dollar amount of underlying exposures that are subordinated to the exposure of the Enterprise to the current dollar amount of underlying exposures. Any reserve account funded by the accumulated cash flows from the underlying exposures that is subordinated to the Enterprise's exposure may be included in the calculation of parameter *A* to the extent that cash is present in the account. Parameter *A* is expressed as a value between 0 and 100 percent.

(2) Parameter $AggUPB_{\$}$ is the aggregate unpaid principal balance of the underlying mortgage exposures.

(3) Parameter *CM*% is the percentage of a tranche sold in the capital markets. *CM*% is expressed as a value between 0 and 100 percent.

(4) Parameter $Collat\%_{RIF}$ is the amount of financial collateral posted by a counterparty under a loss sharing contract expressed as a percentage of the risk in force. For multifamily lender loss sharing transactions where an Enterprise has the contractual right to receive future lender guarantee-fee revenue, the Enterprise may include up to 12 months of expected guarantee-fee revenue in collateral. $Collat\%_{RIF}$ is expressed as a value between 0 and 100 percent.

(5) Parameter *D* is the detachment point for the exposure, which represents the threshold at which credit losses of principal allocated to the exposure would result in a total loss of principal. Parameter *D* equals parameter *A* plus the ratio of the current dollar amount of the exposures that are *pari passu* with the exposure (that is, have equal seniority with respect to credit risk) to the current dollar amount of the underlying exposures. Parameter *D* is expressed as a value between 0 and 100 percent.

(6) Parameter $EL_{\$}$ is the remaining lifetime net expected credit risk losses of the underlying mortgage exposures. $EL_{\$}$ must be calculated internally by an Enterprise. If the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise must calculate $EL_{\$}$ assuming no counterparty haircuts. Parameter $EL_{\$}$ is expressed in dollars.

(7) Parameter *HC* is the haircut for the counterparty in contractual loss sharing transactions.

(i) For a CRT with respect to single-family mortgage exposures, the counterparty haircut is set forth on Table 12 to paragraph (e)(3)(ii) of § 1240.33, determined as if the counterparty to the CRT were a counterparty to loan-level credit enhancement (as defined in § 1240.33(a)) and considering the counterparty rating and mortgage concentration risk of the counterparty to the CRT and the single-family segment and product of the underlying single-family mortgage exposures.

(ii) For a CRT with respect to multifamily mortgage exposures, the counterparty haircut is set forth on Table 1 to this paragraph (b)(7)(ii), with counterparty rating and mortgage concentration risk having the meaning given in § 1240.33(a).

Table 1 to paragraph (b)(7)(ii): Haircuts for Multifamily Loss Sharing CRTs

Counterparty Rating	Mortgage Concentration Risk: Not High	Mortgage Concentration Risk: High
1	2.1%	3.4%
2	5.3%	8.5%
3	6.0%	9.6%
4	12.7%	19.2%
5	16.2%	22.9%
6	22.5%	28.5%
7	41.2%	45.1%
8	48.2%	48.2%

(8) Parameter $LS_{\%}$ is the percentage of a tranche that is either insured, reinsured, or afforded coverage through lender reimbursement of credit losses of principal. $LS_{\%}$ is expressed as a value between 0 and 100 percent.

(9) Parameter $LTF_{\%}$ is the loss timing factor which accounts for maturity differences between the CRT and the underlying mortgage exposures. Maturity differences arise when the maturity date of the CRT is before the maturity dates of the underlying mortgage exposures. $LTF_{\%}$ is expressed as a value between 0 and 100 percent.

(i) An Enterprise must have the following information to calculate $LTF_{\%}$ for a CRT with respect to multifamily mortgage exposures:

(A) The remaining months to the contractual maturity of the CRT (CRT_{RMM}).

(B) The remaining months to maturity of the underlying multifamily mortgage exposures (MME_{RMM}). If the underlying multifamily mortgage exposures have different maturity dates, MME_{RMM} should reflect the multifamily mortgage exposure with the longest maturity.

(C) An Enterprise must use the following method to calculate $LTF_{\%}$ for multifamily CRTs:

$$LTF_{\%} = \frac{CRT_{RMM}}{MME_{RMM}}$$

(ii) An Enterprise must have the following information to calculate $LTF_{\%}$ for a newly issued CRT with respect to single-family mortgage exposures:

(A) The original closing date (or effective date) of the CRT and the maturity date on the CRT.

(B) UPB share of single-family mortgage exposures that have original amortization terms of less than or equal to 189 months ($CRTF15_{\%}$).

(C) UPB share of single-family mortgage exposures that have original amortization terms greater than 189 months and OLTVs of less than or equal to 80 percent ($CRT80NotF15_{\%}$).

(D) The duration of seasoning.

(E) An Enterprise must use the following method to calculate $LTF_{\%}$ for single-family CRTs: Calculate CRT months to maturity (*CRTMthstoMaturity*) using one of the following methods:

(1) For single-family CRTs with reimbursement based upon occurrence or resolution of delinquency, *CRTMthstoMaturity* is the difference between the CRT's maturity date and original closing date, except for the following:

(i) If the coverage based upon delinquency is between one and three months, add 24 months to the difference between the CRT's maturity date and original closing date; and

(ii) If the coverage based upon delinquency is between four and six months, add 18 months to the difference between the CRT's maturity date and original closing date.

(2) For all other single-family CRTs, *CRTMthstoMaturity* is the difference between the CRT's maturity date and original closing date.

(i) If *CRTMthstoMaturity* is a multiple of 12, then an Enterprise must use the first column of Table 2 to paragraph (b)(9)(ii)(E)(*2*)(*iii*) of this section to identify the row matching *CRTMthstoMaturity* and take a weighted average of the three loss timing factors in columns 2, 3, and 4 as follows:

$$LTF\% = (CRTLT15 * CRTF15_{\%}) + (CRTLT80Not15 * CRT80NotF15_{\%}) + (CRTLTGT80Not15 * CRT80NotF15_{\%}) + (CRTLTGT80Not15 * (1 - CRT80NotF15_{\%} - CRTF15_{\%}))$$

(ii) If *CRTMthstoMaturity* is not a multiple of 12, an Enterprise must use the first column of Table 2 to paragraph (b)(9)(ii)(E)(*2*)(*iii*) of this section to identify the two rows that are closest to *CRTMthstoMaturity* and take a weighted average between the two rows of loss timing factors using linear interpolation, where the weights reflect *CRTMthstoMaturity*.

(*iii*) For seasoned single-family CRTs, the $LTF_{\%}$ is calculated:

$$LTF_{\%} = \left(\frac{CRTLT_M - CRTLT_s}{100\% - CRTLT_s}\right)$$

where

$CRTLT_M$ is the loss timing factor calculated under (ii) of this subsection.

$CRTLT_S$ is the loss timing factor calculated under (ii) of this subsection replacing *CRTMthstoMaturity* with the duration of seasoning.

Table 2 to paragraph (b)(9)(ii)(E)(*2*)(*iii*): Single-family CRT Loss Timing Factors

CRTMthstoMaturity: (#1) Number of months from the single-family CRT's original closing date (or effective date) to the maturity date on the CRT	*CRT Loss Timing Factors*		
	*CRTLT*15: (#2) CRTLT for pool groups backed by single-family mortgage exposures with original amortization terms <= 189 months	*CRTLT*80*Not*15: (#3) CRTLT for pool groups backed by single-family mortgage exposures with original amortization terms > 189 months and OLTVs <= 80 percent	*CRTLTGT*80*Not*15: (#4) CRTLT for pool groups backed by single-family mortgage exposures with original amortization terms > 189 months and OLTVs > 80 percent
0	0%	0%	0%
12	1%	0%	0%
24	6%	3%	2%
36	21%	13%	11%
48	44%	31%	26%
60	66%	49%	43%
72	82%	65%	58%
84	90%	74%	68%
96	94%	80%	76%
108	96%	85%	81%
120	98%	88%	86%
132	99%	91%	89%
144	99%	93%	92%
156	100%	94%	94%
168	100%	96%	95%
180	100%	96%	96%
192	100%	97%	97%
204	100%	98%	98%
216	100%	98%	98%
228	100%	98%	98%
240	100%	99%	99%
252	100%	99%	99%
264	100%	99%	99%
276	100%	99%	99%
288	100%	99%	99%
300	100%	100%	100%
312	100%	100%	100%
324	100%	100%	100%
336	100%	100%	100%
348	100%	100%	100%
360	100%	100%	100%

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(10) Parameter $RWA_\$$ is the aggregate credit risk-weighted assets associated with the underlying mortgage exposures.

(11) Parameter $CntptyRWA_\$$ is the aggregate credit risk-weighted assets due to counterparty haircuts from loan-level credit enhancements. $CntptyRWA_\$$ is the difference between:

(i) Parameter $RWA_\$$; and

(ii) Aggregate credit risk-weighted assets associated with the underlying mortgage exposures where the counterparty haircuts for loan-level credit enhancements are set to zero.

(c) *Mechanics of the CRTA.* The risk weight assigned to a retained CRT exposure, or portion of a retained CRT exposure, as appropriate, is the larger of $RW_{\%}$ determined in accordance with paragraph (d) of this section and a risk weight of 10 percent.

(1) When the detachment point, parameter *D,* for a retained CRT exposure is less than or equal to the sum of K_A and $AggEL_{\%}$, the exposure must be assigned a risk weight of 1,250 percent.

(2) When the attachment point, parameter *A,* for a retained CRT exposure is greater than or equal to or equal to the sum of K_A and $AggEL_{\%}$, determined in accordance with paragraph (d) of this section, the exposure must be assigned a risk weight of 10 percent.

(3) When parameter *A* is less than or equal to the sum of K_A and $AggEL_{\%}$, and parameter *D* is greater than the sum of K_A and $AggEL_{\%}$, the Enterprise must calculate the risk weight as 1,250% multiplied by the ratio of (i) the sum of K_A and $AggEL_{\%}$ less parameter *A* to (ii) the difference between parameter *D* and parameter *A*.

(d) *CRTA equations.*

$$RW_{\%,\,Tranche} = \begin{cases} 1{,}250\% \; if \; K_A + AggEL_{\%} \geq D \\ 10\% \; if \; K_A + AggEL_{\%} \leq A \\ 1250\% * \left(\dfrac{K_A + AggEL_{\%} - A}{D - A}\right) \; if \; A < K_A + AggEL_{\%} < D \end{cases}$$

$$AggEL_{\%} = 100\% * \frac{EL\$}{AggUPB_{\$}}$$

If the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise shall calculate K_A as follows:

$$K_A = 100\% * \frac{(RWA_{\$} - CntptyRWA_{\$}) * 8\%}{AggUPB_{\$}}$$

Otherwise the Enterprise shall calculate K_A as follows:

$$K_A = 100\% * \frac{RWA_{\$} * 8\%}{AggUPB_{\$}}$$

(e) *Limitations.* Notwithstanding any other provision of this section, an Enterprise must assign an overall risk weight of not less than 10 percent to a retained CRT exposure.

(f) *Adjusted exposure amount (AEA)*—(1) *In general.* The adjusted exposure amount (AEA) of a retained CRT exposure is equal to:

$$AEA_{\$,Tranche} = EAE_{\%,Tranche} * AggUPB_{\$} * (D - A) * \left(1 - \frac{ELS_{\%,Tranche}}{RW_{\%,\,Tranche} * 8\%}\right)$$

(2) *Inputs*—(i) *Enterprise Adjusted Exposure.* The adjusted exposure (EAE) of an Enterprise with respect to a retained CRT exposure is as follows:

$EAE_{\%,Tranche} = 100\% - (CM_{\%,Tranche} * LTEA_{\%,Tranche,CM} * OEA\%) - (LS_{\%,Tranche} * LSEA_{\%,Tranche,LS} * LTEA_{\%,Tranche,LS} * OEA\%)$,

Where the loss timing effectiveness adjustments (LTEA) for a retained CRT exposure are determined under paragraph (g) of this section, the loss sharing effectiveness adjustment (LSEA) for a retained CRT exposure is determine under paragraph (h) of this section, and the overall effectiveness adjustment (OEA) is determined under paragraph (i) of this section.

(ii) *Expected Loss Share.* The expected loss share is the share of a tranche that is covered by expected loss (ELS):

$$ELS_{\%,Tranche} = \begin{cases} 100\% \; if \; AggEL_{\%} \geq D \\ 0\% \; if \; AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{AggEL_{\%} - A}{D - A}\right) \; if \; A < AggEL_{\%} < D. \end{cases}$$

(iii) *Risk weight.* The risk weight of a retained CRT exposure is determined under paragraph (d) of this section.

(g) *Loss timing effectiveness adjustments.* The loss timing effectiveness adjustments (LTEA) for a retained CRT exposure is calculated according to the following calculation:

$if\ (SLS_{\%,Tranche} - ELS_{\%,Tranche}) > 0\ then$

$$LTEA_{\%,Tranche,CM} = \frac{100\% * \max\left(0, \min\left(1, \dfrac{LTK_{A,CM} + AggEL_{\%} - A}{D - A}\right)\right) - ELS_{\%,Tranche}}{\left(SLS_{\%,Tranche} - ELS_{\%,Tranche}\right)}$$

$$LTEA_{\%,Tranche,LS} = \frac{100\% * \max\left(0, \min\left(1, \dfrac{LTK_{A,LS} + AggEL_{\%} - A}{D - A}\right)\right) - ELS_{\%,Tranche}}{\left(SLS_{\%,Tranche} - ELS_{\%,Tranche}\right)}$$

Otherwise $LTEA_{\%,Tranche,CM} = 100\%$ *and* $LTEA_{\%,Tranche,LS} = 100\%$ where K_A adjusted for loss timing (LTK_A) is as follows:

$LTK_{A,CM} = \max((K_A + AggEL_{\%}) * LTF_{\%,CM}$

$LTK_{A,LS} = \max((K_A + AggEL_{\%}) * LTF_{\%,LS}$; and

$LTF_{\%,CM}$ is $LTF_{\%}$ calculated for the capital markets component of the tranche,

$LTF_{\%,LS}$ is $LTF_{\%}$ calculated for the loss sharing component of the tranche, and the share of the tranche that is covered by expected loss (ELS) and the share of the tranche that is covered by stress loss (SLS) are

$$ELS_{\%,Tranche} = \begin{cases} 100\%\ if\ AggEL_{\%} \geq D \\ 0\%\ if\ AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{AggEL_{\%} - A}{D - A}\right)\ if\ A < AggEL_{\%} < D \end{cases}$$

$$SLS_{\%,Tranche} = \begin{cases} 100\%\ if\ K_A + AggEL_{\%} \geq D \\ 0\%\ if\ K_A + AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{K_A + AggEL_{\%} - A}{D - A}\right)\ if\ A < K_A + AggEL_{\%} < D. \end{cases}$$

(h) *Loss sharing effectiveness adjustment.* The loss sharing effectiveness adjustment (LSEA) for a retained CRT exposure is calculated according to the following calculation:

$if\ (RW_{\%,Tranche} - ELS_{\%,Tranche} * 1250\%) > 0\ then$

$$LSEA_{\%,Tranche} = max\left(\left(1 - HC * \frac{(UnCollatUL_{\%,Tranche} * 1250\% + SRIF_{\%,Tranche} * 10\%)}{(RW_{\%,Tranche} - ELS_{\%,Tranche} * 1250\%)}\right), 0\%\right)$$

Otherwise

$LESA_{\%,Tranche} = 100\%$

where

$UnCollatUL_{\%,Tranche} = max\ (0\%, SLS_{\%,Tranche} - max\ (Collat_{\%RIF,Tranche}, ELS_{\%,Tranche}))$

$SRIF_{\%,Tranche} = 100\% - max\ (SLS_{\%,Tranche}, Collat_{\%RIF,Tranche})$

and the share of the tranche that is covered by expected loss (ELS) and the share of the tranche that is covered by stress loss (SLS) are

$$ELS_{\%,Tranche} = \begin{cases} 100\%\ if\ AggEL_{\%} \geq D \\ 0\%\ if\ AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{AggEL_{\%} - A}{D - A}\right)\ if\ A < AggEL_{\%} < D \end{cases}$$

$$SLS_{\%,Tranche} = \begin{cases} 100\%\ if\ K_A + AggEL_{\%} \geq D \\ 0\%\ if\ K_A + AggEL_{\%} \leq A \\ 100\% * \left(\dfrac{K_A + AggEL_{\%} - A}{D - A}\right)\ if\ A < K_A + AggEL_{\%} < D. \end{cases}$$

(i) *Overall effectiveness adjustment.* The overall effectiveness adjustment (OEA) for a retained CRT exposure is calculated according to the following calculation:

$OEA_{\%} = 90\%$

(j) *RWA supplement for retained loan-level counterparty credit risk.* If the Enterprise elects to use the CRTA for a retained CRT exposure and if the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise must add the following risk-weighted assets supplement ($RWASup_{\$}$) to risk weighted assets for the retained CRT exposure.

$RWASup_{\$,Tranche} = CntptyRWA_{\$} * (D - A)$

Otherwise the Enterprise shall add an $RWASup_{\$}$ of $0.

(k) Credit risk-weighted assets for the retained CRT exposure are as follows:

$RWA_{\$,Tranche} = AEA_{\$,Tranche} * RW_{\%,Tranche} + RWASup_{\$,Tranche}$

[Alternative: Modified SSFA]

(a) *General requirements.* To use the CRT approach to determine the risk weight for a CRT exposure, an Enterprise must have data that enables it to assign accurately the parameters described in paragraph (b) of this section. Data used to assign the parameters described in paragraph (b) of this section must be the most currently available data; if the contracts governing the underlying exposures of the CRT require payments on a monthly or quarterly basis, the data used to assign the parameters described in paragraph (b) of this section must be no more than 91 calendar days old. An Enterprise that does not have the appropriate data to assign the parameters described in paragraph (b) of this section must assign a risk weight of 1,250 percent to the exposure.

(b) *CRTA parameters.* To calculate the risk weight for a CRT exposure using the CRTA, an Enterprise must have accurate information on the following five inputs to the CRTA calculation, each as defined and calculated under § 1240.43(b): K_G; W; A; D; and p.

(c) *Mechanics of the CRTA.* The risk weight assigned to a CRT exposure, or portion of a CRT exposure, as appropriate, is the larger of the risk weight determined in accordance with this paragraph (c) or paragraph (d) of § 1240.43 and a risk weight of 10 percent.

(d) *Limitations.* Notwithstanding any other provision of this section, an Enterprise must assign a risk weight of not less than 10 percent to a CRT exposure.

(e) *Adjusted exposure amount.* The exposure amount for a CRT exposure is not subject to an adjustment under this section.

(f) *RWA adjustment for retained loan-level counterparty credit risk.* If the Enterprise elects to use the CRTA for a retained CRT exposure and if the contractual terms of the CRT do not provide for the transfer of the counterparty credit risk associated with any loan-level credit enhancement or other loss sharing on the underlying mortgage exposures, then the Enterprise must increase the risk-weighted assets of the retained CRT exposure by the amount equal to the portion of aggregate RWAs on the underlying mortgage exposures associated with counterparty credit risk.

§ 1240.45 Securitization exposures to which the SSFA and the CRTA do not apply.

An Enterprise must assign a 1,250 percent risk weight to any acquired CRT exposure and all securitization exposures to which the Enterprise does not apply the SSFA under § 1240.43 or the CRTA under § 1240.44.

§ 1240.46 Recognition of credit risk mitigants for securitization exposures.

(a) *General.* (1) An originating Enterprise that has obtained a credit risk mitigant to hedge its exposure to a synthetic or traditional securitization that satisfies the operational criteria provided in § 1240.41 may recognize the credit risk mitigant under §§ 1240.38 or 1240.39, but only as provided in this section.

(2) An investing Enterprise that has obtained a credit risk mitigant to hedge a securitization exposure may recognize the credit risk mitigant under §§ 1240.38 or 1240.39, but only as provided in this section.

(b) *Mismatches.* An Enterprise must make any applicable adjustment to the protection amount of an eligible guarantee or credit derivative as required in 12 CFR 217.36(d) through (f) for any hedged securitization exposure. In the context of a synthetic securitization, when an eligible guarantee or eligible credit derivative covers multiple hedged exposures that have different residual maturities, the Enterprise must use the longest residual maturity of any of the hedged exposures as the residual maturity of all hedged exposures.

Risk-Weighted Assets for Equity Exposures

§ 1240.51 Exposure measurement.

An Enterprise must calculate its risk-weighted assets for any equity exposures that are permissible under the Enterprise's authorizing statute under 12 CFR 217.51 through 217.53 of this title, substituting "Enterprise for "Board-regulated institution."

Subpart E—Risk-Weighted Assets—Internal Ratings-Based and Advanced Measurement Approaches

§ 1240.100 Purpose, applicability, and principle of conservatism.

(a) *Purpose.* This subpart E establishes:

(1) Minimum requirements for using Enterprise-specific internal risk measurement and management processes for calculating risk-based capital requirements; and

(2) Methodologies for the Enterprises to calculate their advanced approaches total risk-weighted assets.

(b) *Applicability.* (1) This subpart applies to each Enterprise.

(2) An Enterprise must also include in its calculation of advanced credit risk-weighted assets under this subpart all covered positions, as defined in subpart F of this part.

(c) *Principle of conservatism.* Notwithstanding the requirements of this subpart, an Enterprise may choose not to apply a provision of this subpart to one or more exposures provided that:

(1) The Enterprise can demonstrate on an ongoing basis to the satisfaction of FHFA that not applying the provision would, in all circumstances, unambiguously generate a risk-based capital requirement for each such exposure greater than that which would otherwise be required under this subpart;

(2) The Enterprise appropriately manages the risk of each such exposure;

(3) The Enterprise notifies FHFA in writing prior to applying this principle to each such exposure; and

(4) The exposures to which the Enterprise applies this principle are not, in the aggregate, material to the Enterprise.

§ 1240.101 Definitions.

(a) Terms that are set forth in § 1240.2 and used in this subpart have the definitions assigned thereto in § 1240.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Advanced internal ratings-based (IRB) systems means an Enterprise's internal risk rating and segmentation system; risk parameter quantification system; data management and maintenance system; and control, oversight, and validation system for credit risk of exposures.

Advanced systems means an Enterprise's advanced IRB systems, operational risk management processes, operational risk data and assessment systems, operational risk quantification systems, and, to the extent used by the Enterprise, the internal models methodology, advanced CVA approach, double default excessive correlation detection process, and internal models approach (IMA) for equity exposures.

Backtesting means the comparison of an Enterprise's internal estimates with actual outcomes during a sample period not used in model development. In this context, backtesting is one form of out-of-sample testing.

Benchmarking means the comparison of an Enterprise's internal estimates with relevant internal and external data or with estimates based on other estimation techniques.

Business environment and internal control factors means the indicators of an Enterprise's operational risk profile that reflect a current and forward-looking assessment of the Enterprise's underlying business risk factors and internal control environment.

Dependence means a measure of the association among operational losses across and within units of measure.

Economic downturn conditions means, with respect to an exposure held by the Enterprise, those conditions in which the aggregate default rates for that exposure's exposure subcategory (or subdivision of such subcategory selected by the Enterprise) in the exposure's jurisdiction (or subdivision of such jurisdiction selected by the Enterprise) are significantly higher than average.

Eligible operational risk offsets means amounts, not to exceed expected operational loss, that:

(i) Are generated by internal business practices to absorb highly predictable and reasonably stable operational losses, including reserves calculated consistent with GAAP; and

(ii) Are available to cover expected operational losses with a high degree of certainty over a one-year horizon.

Expected operational loss (EOL) means the expected value of the distribution of potential aggregate operational losses, as generated by the Enterprise's operational risk quantification system using a one-year horizon.

External operational loss event data means, with respect to an Enterprise, gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at organizations other than the Enterprise.

Internal operational loss event data means, with respect to an Enterprise, gross operational loss amounts, dates, recoveries, and relevant causal information for operational loss events occurring at the Enterprise.

Operational loss means a loss (excluding insurance or tax effects) resulting from an operational loss event. Operational loss includes all expenses associated with an operational loss event except for opportunity costs, forgone revenue, and costs related to risk management and control enhancements implemented to prevent future operational losses.

Operational loss event means an event that results in loss and is associated with any of the following seven operational loss event type categories:

(i) Internal fraud, which means the operational loss event type category that comprises operational losses resulting from an act involving at least one internal party of a type intended to defraud, misappropriate property, or circumvent regulations, the law, or company policy excluding diversity- and discrimination-type events.

(ii) External fraud, which means the operational loss event type category that comprises operational losses resulting from an act by a third party of a type intended to defraud, misappropriate property, or circumvent the law. All third-party-initiated credit losses are to be treated as credit risk losses.

(iii) Employment practices and workplace safety, which means the operational loss event type category that comprises operational losses resulting from an act inconsistent with employment, health, or safety laws or agreements, payment of personal injury claims, or payment arising from diversity- and discrimination-type events.

(iv) Clients, products, and business practices, which means the operational loss event type category that comprises operational losses resulting from the nature or design of a product or from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements).

(v) Damage to physical assets, which means the operational loss event type category that comprises operational losses resulting from the loss of or damage to physical assets from natural disaster or other events.

(vi) Business disruption and system failures, which means the operational loss event type category that comprises operational losses resulting from disruption of business or system failures.

(vii) Execution, delivery, and process management, which means the operational loss event type category that comprises operational losses resulting from failed transaction processing or process management or losses arising from relations with trade counterparties and vendors.

Operational risk means the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (including legal risk but excluding strategic and reputational risk).

Operational risk exposure means the 99.9th percentile of the distribution of potential aggregate operational losses, as generated by the Enterprise's operational risk quantification system over a one-year horizon (and not incorporating eligible operational risk offsets or qualifying operational risk mitigants).

Risk parameter means a variable used in determining risk-based capital requirements for exposures, such as probability of default, loss given default, exposure at default, or effective maturity.

Scenario analysis means a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and loss impact of plausible high-severity operational losses. Scenario analysis may include the well-reasoned evaluation and use of external operational loss event data, adjusted as appropriate to ensure relevance to an Enterprise's operational risk profile and control structure.

Unexpected operational loss (UOL) means the difference between the Enterprise's operational risk exposure and the Enterprise's expected operational loss.

Unit of measure means the level (for example, organizational unit or operational loss event type) at which the Enterprise's operational risk quantification system generates a separate distribution of potential operational losses.

§ 1240.121 Minimum requirements.

(a) *Process and systems requirements.* (1) An Enterprise must have a rigorous process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive strategy for maintaining an appropriate level of capital.

(2) The systems and processes used by an Enterprise for risk-based capital purposes under this subpart must be consistent with the Enterprise's internal risk management processes and management information reporting systems.

(3) Each Enterprise must have an appropriate infrastructure with risk measurement and management processes that meet the requirements of this section and are appropriate given the Enterprise's size and level of complexity. The Enterprise must ensure that the risk parameters and reference data used to determine its risk-based capital requirements are representative of long run experience with respect to its credit risk and operational risk exposures.

(b) *Risk rating and segmentation systems for exposures.* (1) An Enterprise must have an internal risk rating and segmentation system that accurately, reliably, and meaningfully differentiates among degrees of credit risk for the Enterprise's exposures. When assigning an internal risk rating, an Enterprise may consider a third-party assessment of credit risk, provided that the Enterprise's internal risk rating assignment does not rely solely on the external assessment.

(2) If an Enterprise uses multiple rating or segmentation systems, the Enterprise's rationale for assigning an exposure to a particular system must be documented and applied in a manner that best reflects the obligor or exposure's level of risk. An Enterprise must not inappropriately allocate exposures across systems to minimize regulatory capital requirements.

(3) In assigning ratings to exposures, an Enterprise must use all relevant and material information and ensure that the information is current.

(c) *Quantification of risk parameters for exposures.* (1) The Enterprise must have a comprehensive risk parameter quantification process that produces accurate, timely, and reliable estimates of the risk parameters on a consistent basis for the Enterprise's exposures.

(2) An Enterprise's estimates of risk parameters must incorporate all relevant, material, and available data that is reflective of the Enterprise's actual exposures and of sufficient quality to support the determination of risk-based capital requirements for the exposures. In particular, the population of exposures in the data used for estimation purposes, the underwriting standards in use when the data were generated, and other relevant characteristics, should closely match or be comparable to the Enterprise's exposures and standards. In addition, an Enterprise must:

(i) Demonstrate that its estimates are representative of long run experience, including periods of economic downturn conditions, whether internal or external data are used;

(ii) Take into account any changes in underwriting practice or the process for pursuing recoveries over the observation period;

(iii) Promptly reflect technical advances, new data, and other information as they become available;

(iv) Demonstrate that the data used to estimate risk parameters support the accuracy and robustness of those estimates; and

(v) Demonstrate that its estimation technique performs well in out-of-sample tests whenever possible.

(3) The Enterprise's risk parameter quantification process must produce appropriately conservative risk parameter estimates where the Enterprise has limited relevant data, and any adjustments that are part of the quantification process must not result in a pattern of bias toward lower risk parameter estimates.

(4) The Enterprise's risk parameter estimation process should not rely on the possibility of U.S. government financial assistance.

(5) Default, loss severity, and exposure amount data must include periods of economic downturn conditions, or the Enterprise must adjust its estimates of risk parameters to compensate for the lack of data from periods of economic downturn conditions.

(6) If an Enterprise uses internal data obtained prior to becoming subject to this subpart E or external data to arrive at risk parameter estimates, the Enterprise must demonstrate to FHFA that the Enterprise has made appropriate adjustments if necessary to be consistent with the Enterprise's definition of default. Internal data obtained after the Enterprise becomes subject to this subpart E must be consistent with the Enterprise's definition of default.

(7) The Enterprise must review and update (as appropriate) its risk parameters and its risk parameter quantification process at least annually.

(8) The Enterprise must, at least annually, conduct a comprehensive review and analysis of reference data to determine relevance of the reference data to the Enterprise's exposures, quality of reference data to support risk parameter estimates, and consistency of reference data to the Enterprise's definition of default.

(d) *Operational risk*—(1) *Operational risk management processes.* An Enterprise must:

(i) Have an operational risk management function that:

(A) Is independent of business line management; and

(B) Is responsible for designing, implementing, and overseeing the Enterprise's operational risk data and assessment systems, operational risk quantification systems, and related processes;

(ii) Have and document a process (which must capture business environment and internal control factors affecting the Enterprise's operational risk profile) to identify, measure, monitor, and control operational risk in the Enterprise's products, activities, processes, and systems; and

(iii) Report operational risk exposures, operational loss events, and other relevant operational risk information to business unit management, senior management, and the board of directors (or a designated committee of the board).

(2) *Operational risk data and assessment systems.* An Enterprise must have operational risk data and assessment systems that capture operational risks to which the

Enterprise is exposed. The Enterprise's operational risk data and assessment systems must:

(i) Be structured in a manner consistent with the Enterprise's current business activities, risk profile, technological processes, and risk management processes; and

(ii) Include credible, transparent, systematic, and verifiable processes that incorporate the following elements on an ongoing basis:

(A) *Internal operational loss event data.* The Enterprise must have a systematic process for capturing and using internal operational loss event data in its operational risk data and assessment systems.

(1) The Enterprise's operational risk data and assessment systems must include a historical observation period of at least five years for internal operational loss event data (or such shorter period approved by FHFA to address transitional situations, such as integrating a new business line).

(2) The Enterprise must be able to map its internal operational loss event data into the seven operational loss event type categories.

(3) The Enterprise may refrain from collecting internal operational loss event data for individual operational losses below established dollar threshold amounts if the Enterprise can demonstrate to the satisfaction of FHFA that the thresholds are reasonable, do not exclude important internal operational loss event data, and permit the Enterprise to capture substantially all the dollar value of the Enterprise's operational losses.

(B) *External operational loss event data.* The Enterprise must have a systematic process for determining its methodologies for incorporating external operational loss event data into its operational risk data and assessment systems.

(C) *Scenario analysis.* The Enterprise must have a systematic process for determining its methodologies for incorporating scenario analysis into its operational risk data and assessment systems.

(D) *Business environment and internal control factors.* The Enterprise must incorporate business environment and internal control factors into its operational risk data and assessment systems. The Enterprise must also periodically compare the results of its prior business environment and internal control factor assessments against its actual operational losses incurred in the intervening period.

(3) *Operational risk quantification systems.* The Enterprise's operational risk quantification systems:

(i) Must generate estimates of the Enterprise's operational risk exposure using its operational risk data and assessment systems;

(ii) Must employ a unit of measure that is appropriate for the Enterprise's range of business activities and the variety of operational loss events to which it is exposed, and that does not combine business activities or operational loss events with demonstrably different risk profiles within the same loss distribution;

(iii) Must include a credible, transparent, systematic, and verifiable approach for weighting each of the four elements, described in paragraph (d)(2)(ii) of this section, that an Enterprise is required to incorporate into its operational risk data and assessment systems;

(iv) May use internal estimates of dependence among operational losses across and within units of measure if the Enterprise can demonstrate to the satisfaction of FHFA that its process for estimating dependence is sound, robust to a variety of scenarios, and implemented with integrity, and allows for uncertainty surrounding the estimates. If the Enterprise has not made such a demonstration, it must sum operational risk exposure estimates across units of measure to calculate its total operational risk exposure; and

(v) Must be reviewed and updated (as appropriate) whenever the Enterprise becomes aware of information that may have a material effect on the Enterprise's estimate of operational risk exposure, but the review and update must occur no less frequently than annually.

(e) *Data management and maintenance.* (1) An Enterprise must have data management and maintenance systems that adequately support all aspects of its advanced systems and the timely and accurate reporting of risk-based capital requirements.

(2) An Enterprise must retain data using an electronic format that allows timely retrieval of data for analysis, validation, reporting, and disclosure purposes.

(3) An Enterprise must retain sufficient data elements related to key risk drivers to permit adequate monitoring, validation, and refinement of its advanced systems.

(f) *Control, oversight, and validation mechanisms.* (1) The Enterprise's senior management must ensure that all components of the Enterprise's advanced systems function effectively and comply with the minimum requirements in this section.

(2) The Enterprise's board of directors (or a designated committee of the board) must at least annually review the effectiveness of, and approve, the Enterprise's advanced systems.

(3) An Enterprise must have an effective system of controls and oversight that:

(i) Ensures ongoing compliance with the minimum requirements in this section;

(ii) Maintains the integrity, reliability, and accuracy of the Enterprise's advanced systems; and

(iii) Includes adequate governance and project management processes.

(4) The Enterprise must validate, on an ongoing basis, its advanced systems. The Enterprise's validation process must be independent of the advanced systems' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the advanced systems;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking; and

(iii) An outcomes analysis process that includes backtesting.

(5) The Enterprise must have an internal audit function or equivalent function that is independent of business-line management that at least annually:

(i) Reviews the Enterprise's advanced systems and associated operations, including the operations of its credit function and estimations of risk parameters;

(ii) Assesses the effectiveness of the controls supporting the Enterprise's advanced systems; and

(iii) Documents and reports its findings to the Enterprise's board of directors (or a committee thereof).

(6) The Enterprise must periodically stress test its advanced systems. The stress testing must include a consideration of how economic cycles, especially downturns, affect risk-based capital requirements (including migration across rating grades and segments and the credit risk mitigation benefits of double default treatment).

(g) *Documentation.* The Enterprise must adequately document all material aspects of its advanced systems.

§ 1240.122 Ongoing qualification.

(a) *Changes to advanced systems.* An Enterprise must meet all the minimum requirements in § 1240.121 on an ongoing basis. An Enterprise must notify FHFA when the Enterprise makes any change to an advanced system that would result in a material change in the Enterprise's advanced approaches total risk-weighted asset amount for an exposure type or when the Enterprise makes any significant change to its modeling assumptions.

(b) *Failure to comply with qualification requirements.* (1) If FHFA determines that an Enterprise fails to comply with the requirements in § 1240.121, FHFA will notify the Enterprise in writing of the Enterprise's failure to comply.

(2) The Enterprise must establish and submit a plan satisfactory to FHFA to return to compliance with the qualification requirements.

(3) In addition, if FHFA determines that the Enterprise's advanced approaches total risk-weighted assets are not commensurate with the Enterprise's credit, market, operational, or other risks, FHFA may require such an Enterprise to calculate its advanced approaches total risk-weighted assets with any modifications provided by FHFA.

§ 1240.123 Advanced approaches credit risk-weighted asset calculations.

(a) An Enterprise must use its advanced systems to determine its credit risk capital requirements for each of the following exposures:

(1) General credit risk (including for mortgage exposures);

(2) Cleared transactions;

(3) Default fund contributions;

(4) Unsettled transactions;

(5) Securitization exposures;

(6) Equity exposures; and

(7) The fair value adjustment to reflect counterparty credit risk in valuation of OTC derivative contracts.

(b) The credit-risk-weighted assets calculated under this subpart E equals the aggregate credit risk capital requirement under paragraph (a) of this section multiplied by 12.5.

§ 1240.161 Qualification requirements for incorporation of operational risk mitigants.

(a) *Qualification to use operational risk mitigants.* An Enterprise may adjust its estimate of operational risk exposure to reflect qualifying operational risk mitigants if:

(1) The Enterprise's operational risk quantification system is able to generate an estimate of the Enterprise's operational risk exposure (which does not incorporate qualifying operational risk mitigants) and an estimate of the Enterprise's operational risk exposure adjusted to incorporate qualifying operational risk mitigants; and

(2) The Enterprise's methodology for incorporating the effects of insurance, if the Enterprise uses insurance as an operational risk mitigant, captures through appropriate discounts to the amount of risk mitigation:

(i) The residual term of the policy, where less than one year;

(ii) The cancellation terms of the policy, where less than one year;

(iii) The policy's timeliness of payment;

(iv) The uncertainty of payment by the provider of the policy; and

(v) Mismatches in coverage between the policy and the hedged operational loss event.

(b) *Qualifying operational risk mitigants.* Qualifying operational risk mitigants are:

(1) Insurance that:

(i) Is provided by an unaffiliated company that the Enterprise deems to have strong capacity to meet its claims payment obligations and the Enterprise assigns the company a probability of default equal to or less than 10 basis points;

(ii) Has an initial term of at least one year and a residual term of more than 90 days;

(iii) Has a minimum notice period for cancellation by the provider of 90 days;

(iv) Has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed depository institution; and

(v) Is explicitly mapped to a potential operational loss event;

(2) In evaluating an operational risk mitigant other than insurance, FHFA will consider whether the operational risk mitigant covers potential operational losses in a manner equivalent to holding total capital.

§ 1240.162 Mechanics of operational risk risk-weighted asset calculation.

(a) If an Enterprise does not qualify to use or does not have qualifying operational risk mitigants, the Enterprise's dollar risk-based capital requirement for operational risk is its operational risk exposure minus eligible operational risk offsets (if any).

(b) If an Enterprise qualifies to use operational risk mitigants and has qualifying operational risk mitigants, the Enterprise's dollar risk-based capital requirement for operational risk is the greater of:

(1) The Enterprise's operational risk exposure adjusted for qualifying operational risk mitigants minus eligible operational risk offsets (if any); or

(2) 0.8 multiplied by the difference between:

(i) The Enterprise's operational risk exposure; and

(ii) Eligible operational risk offsets (if any).

(c) The Enterprise's risk-weighted asset amount for operational risk equals the greater of:

(1) The Enterprise's dollar risk-based capital requirement for operational risk determined under paragraphs (a) or (b) multiplied by 12.5; and

(2) The Enterprise's adjusted total assets multiplied by 0.0015 multiplied by 12.5.

Subpart F—Risk-Weighted Assets—Market Risk

§ 1240.201 Purpose, applicability, and reservation of authority.

(a) *Purpose.* This subpart F establishes risk-based capital requirements for spread risk and provides methods for the Enterprises to calculate their measure for spread risk.

(b) *Applicability.* This subpart applies to each Enterprise.

(c) *Reservation of authority.* Subject to applicable provisions of the Safety and Soundness Act:

(1) FHFA may require an Enterprise to hold an amount of capital greater than otherwise required under this subpart if FHFA determines that the Enterprise's capital requirement for spread risk as calculated under this subpart is not commensurate with the spread risk of the Enterprise's covered positions.

(2) If FHFA determines that the risk-based capital requirement calculated under this subpart by the Enterprise for one or more covered positions or portfolios of covered positions is not commensurate with the risks associated with those positions or portfolios, FHFA may require the Enterprise to assign a different risk-based capital requirement to the positions or portfolios that more accurately reflects the risk of the positions or portfolios.

(3) In addition to calculating risk-based capital requirements for specific positions or portfolios under this subpart, the Enterprise must also calculate risk-based capital requirements for covered positions under subpart D or subpart E of this part, as appropriate.

(4) Nothing in this subpart limits the authority of FHFA under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law.

§ 1240.202 Definitions.

(a) Terms set forth in § 1240.2 and used in this subpart have the definitions assigned in § 1240.2.

(b) For the purposes of this subpart, the following terms are defined as follows:

Backtesting means the comparison of an Enterprise's internal estimates with actual outcomes during a sample period not used in model development. For purposes of this subpart, backtesting is one form of out-of-sample testing.

Covered position means, any asset that has more than *de minimis* spread risk (other than any intangible asset, such as any servicing asset), including:

(i) Any NPL, RPL, reverse mortgage loan, or other mortgage exposure that, in any case, does not secure an MBS guaranteed by the Enterprise;

(ii) Any MBS guaranteed by an Enterprise, MBS guaranteed by Ginnie Mae, reverse mortgage security, PLS, commercial MBS, CRT exposure, or other securitization exposure, regardless of whether the position is held by the Enterprise for the purpose of short-term resale or with the intent of benefiting from actual or expected short-term price movements, or to lock in arbitrage profits; and

(iii) Any other trading asset or trading liability (whether on- or off-balance sheet).[12]

Market risk means the risk of loss on a position that could result from movements in market prices, including spread risk.

Private label security (PLS) means any MBS that is collateralized by a pool or pools of single-family mortgage exposures and that is not guaranteed by an Enterprise or by Ginnie Mae.

Reverse mortgage means a mortgage loan secured by a residential property in which a homeowner relinquishes equity in their home in exchange for regular payments.

Reverse mortgage security means a security collateralized by reverse mortgages.

Spread risk means the risk of loss on a position that could result from a change in the bid or offer price of such position relative to a risk free or funding benchmark, including when due to a change in perceptions of performance or liquidity of the position.

§ 1240.203 Requirements for managing market risk.

(a) *Management of covered positions*—(1) *Active management.* An Enterprise must have clearly defined policies and procedures for actively managing all covered positions. At a minimum, these policies and procedures must require:

(i) Marking covered positions to market or to model on a daily basis;

(ii) Daily assessment of the Enterprise's ability to hedge position and portfolio risks, and of the extent of market liquidity;

(iii) Establishment and daily monitoring of limits on covered positions by a risk control unit independent of the business unit;

(iv) Routine monitoring by senior management of information described in paragraphs (a)(1)(i) through (a)(1)(iii) of this section;

(v) At least annual reassessment of established limits on positions by senior management; and

(vi) At least annual assessments by qualified personnel of the quality of market inputs to the valuation process, the soundness of key assumptions, the reliability of parameter estimation in pricing models, and the stability and accuracy of model calibration under alternative market scenarios.

(2) *Valuation of covered positions.* The Enterprise must have a process for prudent valuation of its covered positions that includes policies and procedures on the valuation of positions, marking positions to market or to model, independent price verification, and valuation adjustments or reserves. The valuation process must consider, as appropriate, unearned credit spreads, close-out costs, early termination costs, investing and funding costs, liquidity, and model risk.

(b) *Requirements for internal models.* (1) A risk control unit independent of the business unit must approve any internal model to calculate its risk-based capital requirement under this subpart.

(2) An Enterprise must meet all of the requirements of this section on an ongoing basis. The Enterprise must promptly notify FHFA when:

(i) The Enterprise plans to extend the use of a model to an additional business line or product type;

(ii) The Enterprise makes any change to an internal model that would result in a material change in the Enterprise's risk-weighted asset amount for a portfolio of covered positions; or

(iii) The Enterprise makes any material change to its modeling assumptions.

(3) FHFA may determine an appropriate capital requirement for the covered positions to which a model would apply, if FHFA determines that the model no longer complies with this subpart or fails to reflect accurately the risks of the Enterprise's covered positions.

(4) The Enterprise must periodically, but no less frequently than annually, review its internal models in light of developments in financial markets and modeling technologies, and enhance those models as appropriate to ensure that they continue to meet the Enterprise's standards for model approval and employ risk measurement methodologies that are most appropriate for the Enterprise's covered positions.

(5) The Enterprise must incorporate its internal models into its risk management process and integrate the internal models used for calculating its market risk measure into its daily risk management process.

(6) The level of sophistication of an Enterprise's internal models must be commensurate with the complexity and amount of its covered positions. An Enterprise's internal models may use any of the generally accepted approaches, including variance-covariance models, historical simulations, or Monte Carlo simulations, to measure market risk.

(7) The Enterprise's internal models must properly measure all the material risks in the covered positions to which they are applied.

(8) The Enterprise's internal models must conservatively assess the risks arising from less liquid positions and positions with limited price transparency under realistic market scenarios.

(9) The Enterprise must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal models to ensure continued applicability and relevance.

(c) *Control, oversight, and validation mechanisms.* (1) The Enterprise must have a risk control unit that reports directly to senior management and is independent from the business units.

(2) The Enterprise must validate its internal models initially and on an ongoing basis. The Enterprise's validation process must be independent of the internal models' development, implementation, and operation, or the validation process must be subjected to an independent review of its adequacy and effectiveness. Validation must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the internal models;

(ii) An ongoing monitoring process that includes verification of processes and the comparison of the Enterprise's model outputs with relevant internal and external data sources or estimation techniques; and

(iii) An outcomes analysis process that includes backtesting.

(3) The Enterprise must stress test the market risk of its covered positions at a frequency appropriate to each portfolio, and in no case less frequently than quarterly. The stress tests must take into account concentration risk (including concentrations in single issuers, industries, sectors, or markets), illiquidity under stressed market conditions, and risks arising from the Enterprise's trading activities that may

[12] Securities subject to repurchase and lending agreements are included as if they are still owned by the Enterprise.

not be adequately captured in its internal models.

(4) The Enterprise must have an internal audit function independent of business-line management that at least annually assesses the effectiveness of the controls supporting the Enterprise's market risk measurement systems, including the activities of the business units and independent risk control unit, compliance with policies and procedures, and calculation of the Enterprise's measures for spread risk under this subpart. At least annually, the internal audit function must report its findings to the Enterprise's board of directors (or a committee thereof).

(d) *Internal assessment of capital adequacy.* The Enterprise must have a rigorous process for assessing its overall capital adequacy in relation to its market risk.

(e) *Documentation.* The Enterprise must adequately document all material aspects of its internal models, management and valuation of covered positions, control, oversight, validation and review processes and results, and internal assessment of capital adequacy.

§ 1240.204 Measure for spread risk.

(a) *General requirement*—(1) *In general.* An Enterprise must calculate its standardized measure for spread risk by following the steps described in paragraph (a)(2) of this section. An Enterprise also must calculate an advanced measure for spread risk by following the steps in paragraph (a)(2) of this section.

(2) *Measure for spread risk.* An Enterprise must calculate the standardized measure for spread risk, which equals the sum of the spread risk capital requirements of all covered positions using one or more of its internal models except as contemplated by paragraphs (b) or (c) of this section. An Enterprise also must calculate the advanced measure for spread risk, which equals the sum of the spread risk capital requirements of all covered positions calculated using one or more of its internal models.

(b) *Single point approach*—(1) *General.* For purposes of the standardized measure for spread risk, the spread risk capital requirement for a covered position that is an RPL, an NPL, a reverse mortgage loan, or a reverse mortgage security is the amount equal to:

(i) The market value of the covered position; multiplied by

(ii) The applicable single point shock assumption for the covered position under paragraph (b)(2) of this section.

(2) *Applicable single point shock assumption.* The applicable single point shock assumption is:

(i) 0.0475 for an RPL or an NPL;

(ii) 0.0160 for a reverse mortgage loan; and

(iii) 0.0410 for a reverse mortgage security.

(c) *Spread duration approach*—(1) *General.* For purposes of the standardized measure for spread risk, the spread risk capital requirement for a covered position that is a multifamily mortgage exposure, a PLS, or an MBS guaranteed by an Enterprise or Ginnie Mae and secured by multifamily mortgage exposures is the amount equal to:

(i) The market value of the covered position; multiplied by

(ii) The spread duration of the covered position determined by the Enterprise using one or more of its internal models; multiplied by

(iii) The applicable spread shock assumption under paragraph (c)(2) of this section.

(2) *Applicable spread shock assumption.* The applicable spread shock is:

(i) 0.0015 for a multifamily mortgage exposure;

(ii) 0.0265 for a PLS; and

(iii) 0.0100 for an MBS guaranteed by an Enterprise or by Ginnie Mae and secured by multifamily mortgage exposures (other than IO securities guaranteed by an Enterprise or Ginnie Mae).

Subpart G—Stability Capital Buffer

§ 1240.400 Stability capital buffer.

(a) *Definitions.* For purposes of this subpart:

(1) *Mortgage assets* means, with respect to an Enterprise, the dollar amount equal to the sum of:

(i) The unpaid principal balance of its single-family mortgage exposures, including any single-family loans that secure MBS guaranteed by the Enterprise;

(ii) The unpaid principal balance of its multifamily mortgage exposures, including any multifamily mortgage exposures that secure MBS guaranteed by the Enterprise;

(iii) The carrying value of its MBS guaranteed by an Enterprise or Ginnie Mae, PLS, and other securitization exposures (other than its retained CRT exposures); and

(iv) The exposure amount of any other mortgage assets.

(2) *Residential mortgage debt outstanding* means the dollar amount of mortgage debt outstanding secured by one- to four-family residences or multifamily residences that are located in the United States (and excluding any mortgage debt outstanding secured by non-farm, non-residential or farm properties).

(b) *Amount.* An Enterprise must calculate its stability capital buffer under this section on an annual basis by December 31 of each year. The stability capital buffer of an Enterprise is equal to:

(1) The ratio of:

(i) The mortgage assets of the Enterprise as of December 31 of the previous calendar year; to

(ii) The residential mortgage debt outstanding as of December 31 of the previous calendar year, as published by FHFA;

(2) Minus 0.05;

(3) Multiplied by 5;

(4) Divided by 100; and

(5) Multiplied by the adjusted total assets of the Enterprise.

(c) *Effective date of an adjusted stability capital buffer*—(1) *Increase in stability capital buffer.* An increase in the stability capital buffer of an Enterprise under this section will take effect (*i.e.,* be incorporated into the maximum payout ratio under Table 1 to paragraph (b)(5) of § 1240.11) on January 1 of the year that is one full calendar year after the increased stability capital buffer was calculated.

(2) *Decrease in stability capital buffer.* A decrease in the stability capital buffer of an Enterprise will take effect (*i.e.,* be incorporated into the maximum payout ratio under Table 1 to paragraph (b)(5) of § 1240.11) on January 1 of the year immediately following the calendar year in which the decreased stability capital buffer was calculated.

[Alternative Approach]

§ 1240.400 Stability capital buffer.

(a) *Amount.* An Enterprise must calculate its stability capital buffer under this section on an annual basis by December 31 of each year. The stability capital buffer of an Enterprise is equal to:

(1) Subject to paragraph (b) of this section, the GSIB surcharge as calculated under subpart H of 12 CFR 217 (expressed as a percent), as if the Enterprise were a globally systemic important BHC under 12 CFR 217.402; multiplied by

(2) The weighted average of the risk weights of the mortgage exposures of the Enterprise (weighted by exposure amount) as of the effective date of the final rule; multiplied by

(3) The adjusted total assets of the Enterprise.

(b) *Adjustment to systemic indicator score.* In calculating the GSIB surcharge under paragraph (a)(1) of this section, the Enterprise must:

(1) Exclude from the sum of its systemic indicator scores the systemic indicators for substitutability (payments activity, assets under custody, and underwritten transactions in debt and equity markets) and cross-jurisdictional activity (cross-jurisdictional claims and cross-jurisdictional liabilities); and

(2) Divide the sum of its systemic indicator scores, as adjusted under paragraph (b)(1) of this section, by the amount equal to 0.60.

(c) *Effective date of an adjusted stability buffer*—(1) *Increase in stability capital buffer.* An increase in the stability buffer of an Enterprise under this section will take effect (*i.e.,* be incorporated into the maximum payout ratio under Table 1 to paragraph (b)(5) of § 1240.11) on January 1 of the year that is one full calendar year after the increased stability capital buffer was calculated.

(2) *Decrease in stability capital buffer.* A decrease in the stability buffer of an Enterprise will take effect (*i.e.,* be incorporated into the maximum payout ratio under Table 1 to paragraph (b)(5) of § 1240.11) on January 1 of the year immediately following the calendar year in which the decreased stability capital buffer was calculated.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—SAFETY AND SOUNDNESS

PART 1750—[REMOVED]

■ 6. Remove part 1750.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2020–11279 Filed 6–29–20; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 126 June 30, 2020

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 414, 424, et al.

Medicare and Medicaid Programs; CY 2021 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Home Infusion Therapy Services Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 414, 424, and 484

[CMS–1730–P]

RIN 0938–AU–06

Medicare and Medicaid Programs; CY 2021 Home Health Prospective Payment System Rate Update; Home Health Quality Reporting Requirements; and Home Infusion Therapy Services Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the home health prospective payment system (HH PPS) payment rates and wage index for calendar year (CY) 2021. This proposed rule also proposes to make permanent the changes to the home health regulations regarding the use of technology in providing services under the Medicare home health benefit as described in the Medicare and Medicaid Programs; Revisions in Response to the COVID–19 Public Health Emergency interim final rule with comment period. This proposed rule also proposes to remove provisions related to test transmission of OASIS data by a new HHA, because the provision is now obsolete due to changes in our data submission system. This proposed rule discusses policies finalized in the CY 2020 HH PPS final rule with comment period regarding the permanent home infusion therapy services benefit for CY 2021, and proposes conforming regulations text changes excluding home infusion therapy services from coverage under the Medicare home health benefit. Additionally, this proposed rule discusses Medicare enrollment policies for qualified home infusion therapy suppliers.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 31, 2020.

ADDRESSES: In commenting, please refer to file code CMS–1730–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1730–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1730–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Hillary Loeffler, (410) 786–0456, for home health and home infusion therapy payment inquiries.

For general information about the Home Health Prospective Payment System (HH PPS), send your inquiry via email to: *HomehealthPolicy@cms.hhs.gov.*

For general information about home infusion payment, send your inquiry via email to: *HomeInfusionPolicy@cms.hhs.gov.*

For information about the Home Health Quality Reporting Program (HH QRP), send your inquiry via email to *HHQRPquestions@cms.hhs.gov.*

Mary Rossi-Coajou, 410–786–6051, for condition of participation (CoP) OASIS requirements.

Joseph Schultz, 410–786–2656, for information about home infusion therapy supplier enrollment requirements.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Executive Summary

A. Purpose

1. Home Health Prospective Payment System (HH PPS)

This proposed rule would update the payment rates for home health agencies (HHAs) for calendar year (CY) 2021, as required under section 1895(b) of the Social Security Act (the Act). This proposed rule would also set forth the case-mix weights under section 1895(b)(4)(A)(i) and (b)(4)(B) of the Act for 30-day periods of care in CY 2021; and the CY 2021 fixed-dollar loss ratio (FDL) and the loss-sharing ratio for outlier payments (as required by section 1895(b)(5)(A) of the Act). This rule also proposes to adopt the revised OMB statistical area delineations as described in the September 14, 2018 OMB Bulletin No. 18–04 [1] for the labor market delineations used in the home health wage index, effective beginning in CY 2021. This rule also proposes a cap on wage index decreases in excess of 5 percent. This proposed rule would adopt the new OMB statistical areas and the 5 percent cap on wage index decreases under the statutory discretion afforded to the Secretary under sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act. Finally, this proposed rule proposes to permanently finalize the changes to § 409.43(a) as finalized in ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency'' interim final rule with comment period (First COVID–19 PHE IFC) (85 FR 19230), to state that the plan of care must include any provision of remote patient monitoring or other services furnished via a telecommunications system.

2. Home Health Quality Reporting Program (HH QRP)

We are not proposing any changes for the Home Health Quality Reporting Program.

3. Changes to the CoP OASIS Requirements

This proposed rule would remove an obsolete provision that requires new HHAs that do not yet have a CMS certification number to conduct test OASIS data transmissions to the CMS data system as part of the initial certification process.

4. Home Infusion Therapy Services

This proposed rule outlines the home infusion therapy policies finalized in

[1] On March 6, 2020, OMB issued the most recent OMB Bulletin No. 20–01. Bulletin No. 20–01 was not utilized for this proposed rulemaking.

the CY 2020 HH PPS final rule with comment period (84 FR 60615), as required by section 1834(u) of the Act. This proposed rule includes conforming regulations text changes excluding home infusion therapy services from coverage under the Medicare home health benefit as required by the conforming amendment in section 5012(c)(3) of the 21st Century Cures Act.

5. Enrollment Standards for Qualified Home Infusion Therapy Suppliers

This proposed rule would set out the Medicare provider enrollment policies for qualified home infusion therapy suppliers.

B. Summary of the Provisions of This Rule

1. Home Health Prospective Payment System (HH PPS)

In section III.A of this rule, we propose to set the LUPA thresholds and the case-mix weights for CY 2021 equal to the CY 2020 LUPA thresholds and case-mix weights established for the first year of the PDGM. The PDGM is our new case-mix adjustment methodology to adjust payments for home health periods of care beginning on and after January 1, 2020. The PDGM relies more heavily on clinical characteristics and other patient information to place patients into meaningful payment categories and eliminates the use of therapy service thresholds, as required by section 1895(b)(4)(B) of the Act, as amended by section 51001(a)(3) of the Bipartisan Budget Act of 2018 (BBA of 2018).

Section III.B. of this rule proposes to adopt the OMB statistical area delineations outlined in a September 14, 2018, OMB bulletin No. 18–04. This rule also proposes a transition with a 1-year cap on wage index decreases in excess of 5 percent, consistent with the policy being proposed for other Medicare payment systems. This proposed rule would adopt the new OMB statistical areas and the 5 percent cap on wage index decreases under the statutory discretion afforded to the Secretary under sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act.

In section III.C. of this rule, we propose to update the home health wage index, the CY 2021 national, standardized 30-day period of care payment amounts and the CY 2021 national per-visit payment amounts by the home health payment update percentage. The home health payment update percentage for CY 2021 is estimated to be 2.7 percent. Additionally, for CY 2021, this proposed rule proposes to maintain the fixed-dollar loss ratio at 0.63, as finalized for CY 2020.

Section III.D. of this proposed rule proposes to permanently finalize the changes to § 409.43(a) as finalized in the first COVID–19 PHE IFC (85 FR 19230), to state that the plan of care must include any provision of remote patient monitoring or other services furnished via a telecommunications system and describe how the use of such technology is tied to the patient-specific needs as identified in the comprehensive assessment and will help to achieve the goals outlined on the plan of care.

Section IV. of this proposed rule discusses the HH QRP and proposed changes to the conditions of participation (CoP) OASIS requirements.

In sections V.A.1. and 2. of this proposed rule, we discuss the background and overview of the home infusion therapy services benefit, as well as review the payment policies we finalized in the CY HH PPS final rule with comment period for the CY 2021 implementation (84 FR 60628). In section V.A.5. of this proposed rule, we propose technical regulations text changes to exclude home infusion therapy services from coverage under the Medicare home health benefit, as required by section 5012(c)(3) of the 21st Century Cures Act, which amended section 1861(m) of the Act. In section V.B. of this proposed rule, we discuss proposed requirements regarding enrollment standards for qualified home infusion therapy suppliers.

C. Summary of Costs, Transfers, and Benefits

TABLE 1: SUMMARY OF COSTS, TRANSFERS, AND BENEFITS

Provision Description	Costs and Cost Savings	Transfers	Benefits
CY 2021 HH PPS Payment Rate Update		The overall economic impact of the HH PPS payment rate update is an estimated $540 million (2.6 percent) in increased payments to HHAs in CY 2021.	To ensure home health payments are consistent with statutory payment authority for CY 2021.
HH QRP	No proposals are being made therefore, no costs or savings are associated with this provision.		
OASIS	There are no costs associated with this provision.		
CY 2021 Payments for Home Infusion Therapy Services		The overall economic impact of updating the payment rates for home infusion therapy services, based on the Physician Fee Schedule amounts for CY 2021, is no more than a 1 to 2 percent increase /decrease ($1 million or less) in payments to eligible home infusion therapy suppliers in CY 2021.	To ensure that payment for home infusion therapy services are consistent with statutory authority for CY 2021.
Home Infusion Therapy Supplier Enrollment	The estimated average annual burden associated with home infusion therapy supplier enrollment over the 3-year OMB approval period is 583 hours at a cost of $28,583.	We estimate a total application fee cost to enrollees of $364,800 (or 600 x $608) in the first year, $31,050 (or 50 x $621) in the second year, and $31,700 (or 50 x $634) in the third year. This constitutes an average annual figure over the first 3 years of this proposed requirement of $142,517.	Enrollment ensures that home infusion therapy suppliers meet all applicable requirements.

III. Home Health Prospective Payment System

A. Overview of the Home Health Prospective Payment System

1. Statutory Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted August 5, 1997), significantly changed the way Medicare pays for Medicare home health services. Section 4603 of the BBA mandated the development of the HH PPS. Until the implementation of the HH PPS on October 1, 2000, HHAs received payment under a retrospective reimbursement system. Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered home health services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Act, entitled ''Prospective Payment For Home Health Services.'' Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare. Section 1895(b)(2) of the Act required that, in defining a prospective payment amount, the Secretary will consider an appropriate unit of service and the number, type, and duration of visits provided within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

Section 1895(b)(3)(A) of the Act required the following: (1) The computation of a standard prospective payment amount that includes all costs for HH services covered and paid for on a reasonable cost basis, and that such amounts be initially based on the most recent audited cost report data available to the Secretary (as of the effective date of the 2000 final rule); and (2) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act requires the standard prospective payment amounts be annually updated by the home health applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor for significant variation in costs among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of area wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level. Under section 1895(b)(4)(C) of the Act, the wage adjustment factors used by the Secretary may be the factors used under section 1886(d)(3)(E) of the Act. Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers due to unusual variations in the type or amount of medically necessary care. Section 3131(b)(2) of the Affordable Care Act revised section 1895(b)(5) of the Act so that total outlier payments in a given year would not exceed 2.5 percent of total payments projected or estimated. The provision also made permanent a 10 percent agency-level outlier payment cap.

In accordance with the statute, as amended by the BBA, we published a final rule in the July 3, 2000 **Federal**

Register (65 FR 41128) to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for home health services as required by section 4603 of the BBA, as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (OCESAA), (Pub. L. 105–277, enacted October 21, 1998); and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, (BBRA) (Pub. L. 106–113, enacted November 29, 1999). The requirements include the implementation of a HH PPS for home health services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of home health services under Part A and Part B. For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

Section 5201(c) of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted February 8, 2006) added new section 1895(b)(3)(B)(v) to the Act, requiring HHAs to submit data for purposes of measuring health care quality, and linking the quality data submission to the annual applicable payment percentage increase. This data submission requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase is reduced by 2 percentage points. In the November 9, 2006 **Federal Register** (71 FR 65935), we published a final rule to implement the pay-for-reporting requirement of the DRA, which was codified at § 484.225(h) and (i) in accordance with the statute. The pay-for-reporting requirement was implemented on January 1, 2007.

The Affordable Care Act made additional changes to the HH PPS. One of the changes in section 3131 of the Affordable Care Act is the amendment to section 421(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) as amended by section 5201(b) of the DRA. Section 421(a) of the MMA, as amended by section 3131 of the Affordable Care Act, requires that the Secretary increase, by 3 percent, the payment amount otherwise made under section 1895 of the Act, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits ending on or after April 1, 2010, and before January 1, 2016. Section 210 of the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10) (MACRA) amended section 421(a) of the MMA to extend the 3 percent rural add-on payment for home health services provided in a rural area (as defined in section 1886(d)(2)(D) of the Act) through January 1, 2018. In addition, section 411(d) of MACRA amended section 1895(b)(3)(B) of the Act such that CY 2018 home health payments be updated by a 1 percent market basket increase. Section 50208(a)(1) of the BBA of 2018 again extended the 3 percent rural add-on through the end of 2018. In addition, this section of the BBA of 2018 made some important changes to the rural add-on for CYs 2019 through 2022.

Section 51001(a)(1)(B) of the Bipartisan Budget Act of 2018 (BBA of 2018) amended section 1895(b) of the Act to require a change to the home health unit of payment to 30-day periods beginning January 1, 2020. Section 51001(a)(2)(A) of the BBA of 2018 added a new subclause (iv) under section 1895(b)(3)(A) of the Act, requiring the Secretary to calculate a standard prospective payment amount (or amounts) for 30-day units of service, furnished that end during the 12-month period beginning January 1, 2020, in a budget neutral manner, such that estimated aggregate expenditures under the HH PPS during CY 2020 are equal to the estimated aggregate expenditures that otherwise would have been made under the HH PPS during CY 2020 in the absence of the change to a 30-day unit of service. Section 1895(b)(3)(A)(iv) of the Act requires that the calculation of the standard prospective payment amount (or amounts) for CY 2020 be made before the application of the annual update to the standard prospective payment amount as required by section 1895(b)(3)(B) of the Act.

Additionally, section 1895(b)(3)(A)(iv) of the Act requires that in calculating the standard prospective payment amount (or amounts), the Secretary must make assumptions about behavior changes that could occur as a result of the implementation of the 30-day unit of service under section 1895(b)(2)(B) of the Act and case-mix adjustment factors established under section 1895(b)(4)(B) of the Act. Section 1895(b)(3)(A)(iv) of the Act further requires the Secretary to provide a description of the behavior assumptions made in notice and comment rulemaking. CMS finalized these behavior assumptions in the CY 2019 HH PPS final rule with comment period (83 FR 56461).

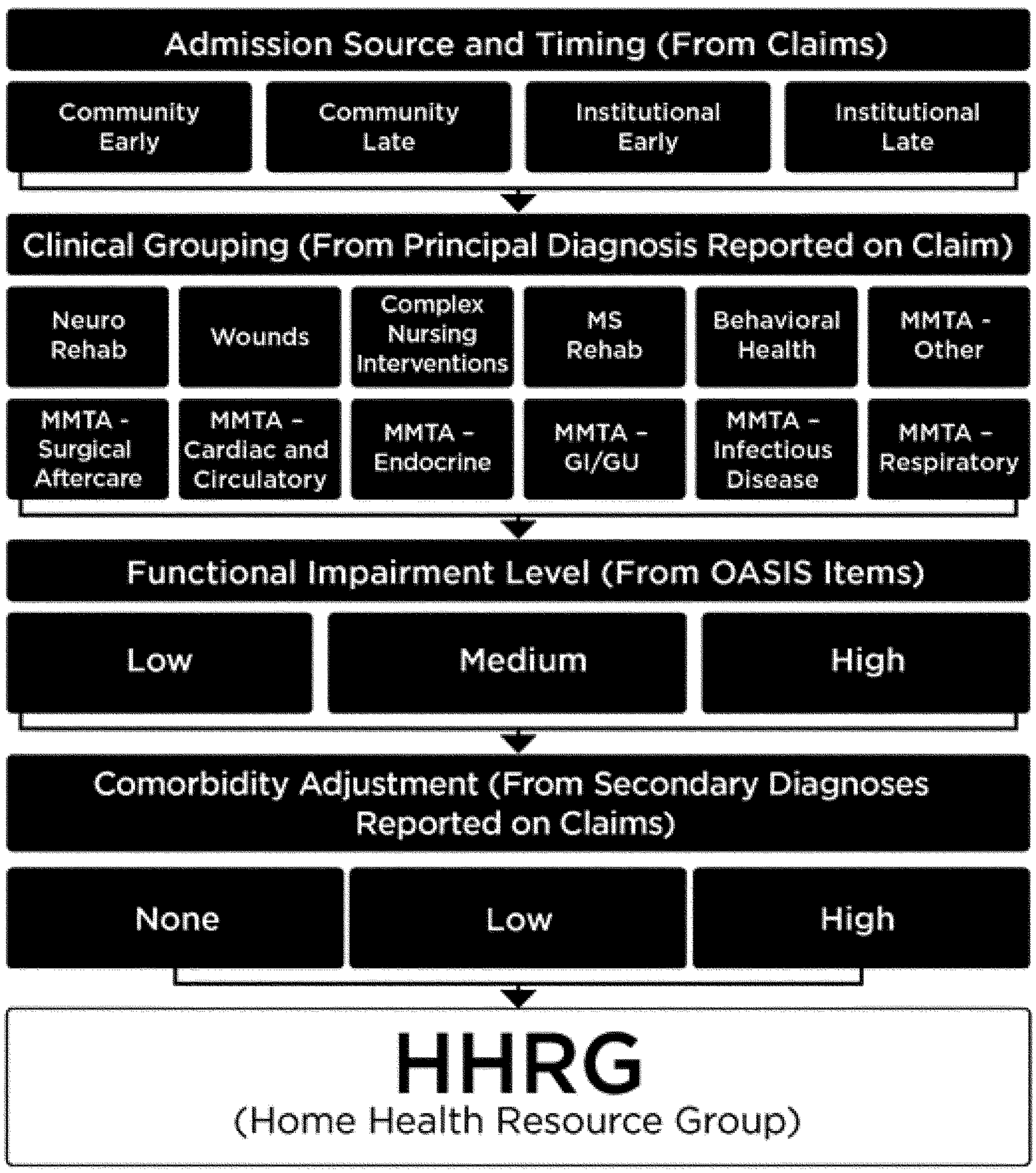
Section 51001(a)(2)(B) of the BBA of 2018 also added a new subparagraph (D) to section 1895(b)(3) of the Act. Section 1895(b)(3)(D)(i) of the Act requires the Secretary to annually determine the impact of differences between assumed behavior changes as described in section 1895(b)(3)(A)(iv) of the Act, and actual behavior changes on estimated aggregate expenditures under the HH PPS with respect to years beginning with 2020 and ending with 2026. Section 1895(b)(3)(D)(ii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more permanent increases or decreases to the standard prospective payment amount (or amounts) for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Additionally, 1895(b)(3)(D)(iii) of the Act requires the Secretary, at a time and in a manner determined appropriate, through notice and comment rulemaking, to provide for one or more temporary increases or decreases, based on retrospective behavior, to the payment amount for a unit of home health services for applicable years, on a prospective basis, to offset for such increases or decreases in estimated aggregate expenditures, as determined under section 1895(b)(3)(D)(i) of the Act. Such a temporary increase or decrease shall apply only with respect to the year for which such temporary increase or decrease is made, and the Secretary shall not take into account such a temporary increase or decrease in computing the payment amount for a unit of home health services for a subsequent year. And finally, section 51001(a)(3) of the BBA of 2018 amends section 1895(b)(4)(B) of the Act by adding a new clause (ii) to require the Secretary to eliminate the use of therapy thresholds in the case-mix system for CY 2020 and subsequent years.

2. Current System for Payment of Home Health Services Beginning in CY 2020 and Subsequent Year

For home health periods of care beginning on or after January 1, 2020, Medicare makes payment under the HH PPS on the basis of a national, standardized 30-day period payment rate that is adjusted for the applicable case-mix and wage index in accordance with section 51001 (a)(1)(B) of the BBA of 2018. The national, standardized 30-day period rate includes the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine supplies (NRS) is now part of the national, standardized 30-day period rate. Durable medical equipment provided as a home health service as defined in section 1861(m) of the Act is paid the fee schedule amount and is not included in the national, standardized 30-day period payment amount.

To better align payment with patient care needs and better ensure that clinically complex and ill beneficiaries have adequate access to home health care, in the CY 2019 HH PPS final rule with comment period (83 FR 56406), we finalized case-mix methodology refinements through the Patient-Driven Groupings Model (PDGM) for home health periods of care beginning on or after January 1, 2020. To adjust for case-mix for 30-day periods of care beginning on and after January 1, 2020, the HH PPS uses a 432-category case mix classification system to assign patients to a home health resource group (HHRG) using patient characteristics and other clinical information from Medicare claims and the Outcome and Assessment Information Set (OASIS) assessment instrument. These 432 HHRGs represent the different payment groups based on five main case-mix variables under the PDGM, as shown in Figure 1, and subsequently described in more detail throughout this section. Each HHRG has an associated case-mix weight which is used in calculating the payment for a 30-day period of care. For periods of care with visits less than the low-utilization payment adjustment (LUPA) threshold for each HHRG, Medicare pays national per-visit rates based on the discipline(s) providing the services. Medicare also adjusts the national standardized 30-day period payment rate for certain intervening events that are subject to a partial payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

Under this new case-mix methodology, case-mix weights are generated for each of the different PDGM payment groups by regressing resource use for each of the five categories listed in this section of this proposed rule (admission source, timing clinical grouping, functional impairment level, and comorbidity adjustment) using a fixed effects model. Below is a description of each of the case-mix variables under the PDGM.



a. Timing

Thirty-day periods of care are classified as ''early'' or ''late'' depending on when they occur within a sequence of 30-day periods. The first 30-day period of care is classified as early and all subsequent 30-day periods of care in the sequence (second or later) are classified as late. A 30-day period is not be considered early unless there is a gap of more than 60 days between the end of one period of care and the start of another. Information regarding the timing of a 30-day period of care comes from Medicare home health claims data and not the OASIS assessment to determine if a 30-day period of care is ''early'' or ''late''. While the PDGM case-mix adjustment is applied to each 30-day period of care, other home health requirements continue on a 60-day basis. Specifically, certifications and re-certifications continue on a 60-day basis and the comprehensive assessment must still be completed within 5 days of the start of care date and completed no less frequently than during the last 5 days of every 60 days beginning with the start of care date, as currently required by § 484.55, ''Condition of participation: Comprehensive assessment of patients.''

b. Admission Source

Each 30-day period of care is classified into one of two admission source categories—community or institutional—depending on what healthcare setting was utilized in the 14 days prior to home health. Thirty-day periods of care for beneficiaries with any inpatient acute care hospitalizations, inpatient psychiatric facility (IPF) stays, skilled nursing facility (SNF) stays, inpatient rehabilitation facility (IRF) stays, or long-term care hospital (LTCH) stays within 14-days prior to a home health admission are designated as institutional admissions.

The institutional admission source category also includes patients that had an acute care hospital stay during a previous 30-day period of care and within 14 days prior to the subsequent, contiguous 30-day period of care and for which the patient was not discharged from home health and readmitted (that is, the ''admission date'' and ''from date'' for the subsequent 30-day period of care do not match), as we acknowledge that HHAs have discretion as to whether they discharge the patient due to a hospitalization and then readmit the patient after hospital discharge. However, we do not categorize post-acute care stays, meaning SNF, IRF, LTCH, or IPF stays, that occur during a previous 30-day period of care and within 14 days of a subsequent, contiguous 30-day period of care as institutional (that is, the ''admission date'' and ''from date'' for the subsequent 30-day period of care do not match), as HHAs should discharge the patient if the patient required post-acute care in a different setting, or inpatient psychiatric care, and then readmit the patient, if necessary, after discharge from such setting. All other 30-day periods of care would be designated as community admissions.

Information from the Medicare claims processing system determines the appropriate admission source for final claim payment. The OASIS assessment is not utilized in evaluating for admission source information. Obtaining this information from the Medicare claims processing system, rather than as reported on the OASIS, is a more accurate way to determine admission source information as HHAs may be unaware of an acute or post-acute care stay prior to home health admission. While HHAs can report an occurrence code on submitted claims to indicate the admission source, obtaining this information from the Medicare claims processing system allows CMS the opportunity and flexibility to verify the source of the admission and correct any improper payments as deemed appropriate. When the Medicare claims processing system receives a Medicare home health claim, the systems check for the presence of a Medicare acute or post-acute care claim for an institutional stay. If such an institutional claim is found, and the institutional claim occurred within 14 days of the home health admission, our systems trigger an automatic adjustment to the corresponding HH claim to the appropriate institutional category. Similarly, when the Medicare claims processing system receives a Medicare acute or post-acute care claim for an institutional stay, the systems will check for the presence of a HH claim with a community admission source payment group. If such HH claim is found, and the institutional stay occurred within 14 days prior to the home health admission, our systems trigger an automatic adjustment of the HH claim to the appropriate institutional category. This process may occur any time within the 12-month timely filing period for the acute or post-acute claim. For purposes of a Request for Anticipated Payment (RAP), only the final claim will be adjusted to reflect the admission source. More information regarding the admission source reporting requirements for RAP and claims submission, including the use of admission source occurrence codes, can be found in the Medicare Claims Processing Manual, chapter 10.[2]

c. Clinical Groupings

Each 30-day period of care is grouped into one of 12 clinical groups which describe the primary reason for which patients are receiving home health services under the Medicare home health benefit. The clinical grouping is based on the principal diagnosis reported on home health claims. The 12 clinical groups are listed and described in Table 2.

[2] Medicare Claims Processing Manual Chapter 10—Home Health Agency Billing. *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c10.pdf.*

TABLE 2: CLINICAL GROUPS FOR CASE-MIX ADJUSTMENT

Clinical Groups	The Primary Reason for the Home Health Encounter is to Provide:
Musculoskeletal Rehabilitation	Therapy (physical, occupational or speech) for a musculoskeletal condition
Neuro/Stroke Rehabilitation	Therapy (physical, occupational or speech) for a neurological condition or stroke
Wounds – Post-Op Wound Aftercare and Skin/Non-Surgical Wound Care	Assessment, treatment & evaluation of a surgical wound(s); assessment, treatment & evaluation of non-surgical wounds, ulcers, burns, and other lesions
Behavioral Health Care	Assessment, treatment & evaluation of psychiatric and substance abuse conditions
Complex Nursing Interventions	Assessment, treatment & evaluation of complex medical & surgical conditions including IV, TPN, enteral nutrition, ventilator, and ostomies
Medication Management, Teaching and Assessment (MMTA)	
MMTA –Surgical Aftercare	Assessment, evaluation, teaching, and medication management for surgical aftercare
MMTA – Cardiac/Circulatory	Assessment, evaluation, teaching, and medication management for cardiac or other circulatory related conditions
MMTA – Endocrine	Assessment, evaluation, teaching, and medication management for endocrine related conditions
MMTA – GI/GU	Assessment, evaluation, teaching, and medication management for gastrointestinal or genitourinary related conditions
MMTA – Infectious Disease/Neoplasms/Blood-forming Diseases	Assessment, evaluation, teaching, and medication management for conditions related to infectious diseases, neoplasms, and blood-forming diseases
MMTA –Respiratory	Assessment, evaluation, teaching, and medication management for respiratory related conditions
MMTA – Other	Assessment, evaluation, teaching, and medication management for a variety of medical and surgical conditions not classified in one of the previously listed groups

If a home health claim is submitted with a principal diagnosis that is not assigned to a clinical group (for example, because the diagnosis code is vague, ill-defined, unspecified, or is subject to certain ICD–10–CM coding conventions), the claim is returned to the provider for more definitive coding. While these clinical groups represent the primary reason for home health services during a 30-day period of care, this does not mean that they represent the only reason for home health services. Home health remains a multidisciplinary benefit and payment is bundled to cover all necessary home health services identified on the individualized home health plan of care. Therefore, regardless of the clinical group assignment, HHAs are required, in accordance with the home health CoPs at § 484.60(a)(2), to ensure that the individualized home health plan of care addresses all care needs, including the disciplines to provide such care. Under the PDGM, the clinical group is just one variable in the overall case-mix adjustment for a home health period of care. Moreover, it is possible for the principal diagnosis to change between the first and second 30-day period of care and the claim for the second 30-day period of care would reflect the new principal diagnosis. HHAs would not change the claim for the first 30-day period.

d. Functional Impairment Level

Each 30-day period of care will be placed into one of three functional impairment levels, low, medium, or high, based on responses to certain OASIS functional items associated with grooming, bathing, dressing, ambulating, transferring, and risk for hospitalization. The specific OASIS items that are used for the functional impairment level are found in Table 7 in the CY 2020 HH PPS final rule with comment period (84 FR 60478, 60490). Responses to these OASIS items are grouped together into response categories with similar resource use and each response category has associated points. A more detailed description as to how these response categories were established can be found in the technical report, ''Overview of the Home Health Groupings Model'' posted on the HHA web page.[3] The sum of these points' results in a functional impairment level score used to group 30-day periods of care into a functional impairment level with similar resource use. The scores associated with the functional impairment levels vary by clinical group to account for differences in resource utilization. The functional impairment level will remain the same for the first and second 30-day periods of care unless there has been a significant change in condition which warranted an ''other follow-up'' assessment prior to the second 30-day period of care. For each 30-day period of care, the Medicare claims processing system will look for the most recent

[3] Overview of the Home Health Groupings Model. November 18, 2016. *https://downloads.cms.gov/files/hhgm%20technical%20report%20120516%20sxf.pdf.*

OASIS assessment based on the claims ''from date.''

e. Comorbidity Adjustment

Thirty-day periods will receive a comorbidity adjustment category based on the presence of certain secondary diagnoses reported on home health claims. These diagnoses are based on a home-health specific list of clinically and statistically significant secondary diagnosis subgroups with similar resource use, meaning the secondary diagnoses have at least as high as the median resource use and represent more that 0.1 percent of 30-day periods of care. Home health 30-day periods of care can receive a comorbidity adjustment under the following circumstances:

- *Low comorbidity adjustment:* There is a reported secondary diagnosis on the home health-specific comorbidity subgroup list that is associated with higher resource use.
- *High comorbidity adjustment:* There are two or more secondary diagnoses on the home health-specific comorbidity subgroup interaction list that are associated with higher resource use when both are reported together compared to if they were reported separately. That is, the two diagnoses may interact with one another, resulting in higher resource use.
- *No comorbidity adjustment:* A 30-day period of care will receive no comorbidity adjustment if no secondary diagnoses exist or none meet the criteria for a low or high comorbidity adjustment. A 30-day period of care can have a low comorbidity adjustment or a high comorbidity adjustment, but not both. A 30-day period of care can receive only one low comorbidity adjustment regardless of the number of secondary diagnoses reported on the home health claim that fell into one of the individual comorbidity subgroups or one high comorbidity adjustment regardless of the number of comorbidity group interactions, as applicable. The low comorbidity adjustment amount will be the same across the subgroups and the high comorbidity adjustment will be the same across the subgroup interactions.

B. Proposed Provisions for Payment Under the Home Health Prospective Payment System (HH PPS)

1. CY 2021 PDGM Low-Utilization Payment Adjustment (LUPA) Thresholds and PDGM Case-Mix Weights

a. Proposed CY 2021 PDGM LUPA Thresholds

Under the HH PPS, low utilization payment adjustments (LUPAs) are paid when a certain visit threshold for a payment group during a 30-day period of care is not met. The approach to calculating the LUPA thresholds under the PDGM changed to account for the 30-day unit of payment. Therefore, in order to target the same percentage of LUPA periods as under the previous 153-group case-mix system (that is, approximately 7–8 percent of 30-day periods would be LUPAs), in the CY 2019 HH PPS final rule (83 FR 56492) we finalized that the LUPA thresholds would be set at the 10th percentile of visits or 2 visits, whichever is higher, for each payment group. This means that the LUPA threshold for each 30-day period of care varies depending on the PDGM payment group to which it is assigned. If the LUPA threshold for the payment group is met under the PDGM, the 30-day period of care will be paid the full 30-day period case-mix adjusted payment amount. If a 30-day period of care does not meet the PDGM LUPA visit threshold, then payment will be made using the CY 2021 per-visit payment amounts as described in section III.C.3.c. of this proposed rule. For example, if the LUPA visit threshold is four, and a 30-day period of care has four or more visits, it is paid the full 30-day period payment amount; if the period of care has three or less visits, payment is made using the per-visit payment amounts.

In the CY 2019 HH PPS final rule with comment period (83 FR 56492), we finalized our policy that the LUPA thresholds for each PDGM payment group would be reevaluated every year based on the most current utilization data available at the time of rulemaking. However, CY 2020 was the first year of the new case-mix adjustment methodology and 30-day unit of payment and at this time we do not have sufficient CY 2020 data in which to make any changes to the LUPA thresholds for CY 2021. We believe that making any changes to the LUPA thresholds for CY 2021 based off of 2019 utilization using the 153-group model would result in little change in the LUPA thresholds from CY 2020 to CY 2021 and would result in additional burden to HHAs and software vendors in revising their internal billing software to reflect only minor changes. Therefore, we are proposing to maintain the LUPA thresholds finalized and shown in Table 16 of the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2021 payment purposes. We will repost these LUPA thresholds (along with the case-mix weights) that will be used for CY 2021 on the HHA Center and PDGM web pages.

b. CY 2021 PDGM Case-Mix Weights

As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56502), the PDGM places patients into meaningful payment categories based on patient and other characteristics, such as timing, admission source, clinical grouping using the reported principal diagnosis, functional impairment level, and comorbid conditions. The PDGM case-mix methodology results in 432 unique case-mix groups called HHRGs. We also finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56515) to annually recalibrate the PDGM case-mix weights using a fixed effects model using the most recent, complete utilization data available at the time of annual rulemaking. However, as noted previously, we do not have sufficient CY 2020 data from the first year of the new case-mix methodology and because the 2019 data utilize the old 153-case-mix methodology and 60-day episodes of payment such data are not appropriate for use to simulate 30-day periods under the PDGM in order to recalibrate the case-mix weights for CY 2021. Therefore, we are proposing to maintain the PDGM case-mix weights finalized and shown in Table 16 of the CY 2020 HH PPS final rule with comment period (84 FR 60522) for CY 2021 payment purposes.

We will repost the case-mix weights proposed for CY 2021 on the HHA Center and PDGM web pages. As mentioned previously in this section, we believe this approach for CY 2021 is more accurate given the limited utilization data for CY 2020 and will be less burdensome for HHAs and software vendors, who continue to familiarize themselves with this new case-mix methodology.

2. Proposed Home Health Wage Index Changes

a. Proposed Implementation of New Labor Market Delineations

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On April 10, 2018 OMB issued OMB Bulletin No. 18–03 which superseded the August 15, 2017 OMB Bulletin No. 17–01. On September 14, 2018, OMB issued, OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revisions to the delineation of MSAs, Micropolitan Statistical Areas, and Combines Statistical Areas, and guidance on uses of the delineation in these areas. A copy of the September 2018 bulletin is available at: *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.* We note that on March 6, 2020 OMB issued OMB Bulletin No. 20–01 (available at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf.* As discussed below, this bulletin was not available in time for the development of this proposed rule. Bulletin No. 18–04 states it ''provides the delineations of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published in the June 28, 2010, **Federal Register** (75 FR 37246 through 37252), and Census Bureau data.''

While the revisions OMB published on September 14, 2018, are not as sweeping as the changes made when we adopted the CBSA geographic designations for CY 2006, the September 14, 2018 bulletin does contain a number of significant changes. For example, there are new CBSAs, urban counties that have become rural, rural counties that have become urban, and existing CBSAs that have been split apart. We believe it is important for the home health wage index to use the latest OMB delineations available in order to maintain a more accurate and up-to-date payment system that reflects the reality of population shifts and labor market conditions. We further believe that using the September 2018 OMB delineations would increase the integrity of the HH PPS wage index by creating a more accurate representation of geographic variation in wage levels. We have reviewed our findings and impacts relating to the new OMB delineations, and have concluded that there is no compelling reason to further delay implementation. We are proposing to implement the new OMB delineations as described in the September 14, 2018 OMB Bulletin No. 18–04 for the home health wage index effective beginning in CY 2021. As noted previously, the March 6, 2020 OMB Bulletin No. 20–01 was not available in time for development of this proposed rule. We will include any updates from OMB Bulletin No. 20–01 in any changes that would be adopted in the CY 2022 HH PPS proposed rule.

(1) Micropolitan Statistical Areas

As discussed in the CY 2006 HH PPS proposed rule (70 FR 40788) and final rule (70 FR 68132), CMS considered how to use the Micropolitan statistical area definitions in the calculation of the wage index. OMB defines a ''Micropolitan Statistical Area'' as a ''CBSA'' associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 (75 FR 37252). We refer to these as Micropolitan Areas. After extensive impact analysis, consistent with the treatment of these areas under the IPPS as discussed in the FY 2005 IPPS final rule (69 FR 49029 through 49032), we determined the best course of action would be to treat Micropolitan Areas as ''rural'' and include them in the calculation of each state's home health rural wage index (see 70 FR 40788 and 70 FR 68132). Thus, the HH PPS statewide rural wage index is determined using IPPS hospital data from hospitals located in non-Metropolitan Statistical Areas (MSA).

Based upon the 2010 Decennial Census data, a number of urban counties have switched status and have joined or became Micropolitan Areas, and some counties that once were part of a Micropolitan Area, have become urban. Overall, there are fewer Micropolitan Areas (542) under the new OMB delineations based on the 2010 Census than existed under the latest data from the 2000 Census (581). We believe that the best course of action would be to continue the policy established in the CY 2006 HH PPS final rule and include Micropolitan Areas in each state's rural wage index. These areas continue to be defined as having relatively small urban cores (populations of 10,000 to 49,999). Therefore, in conjunction with our proposal to implement the new OMB labor market delineations beginning in CY 2021 and consistent with the treatment of Micropolitan Areas under the IPPS, we are proposing to continue to treat Micropolitan Areas as ''rural'' and to include Micropolitan Areas in the calculation of each state's rural wage index.

(2) Urban Counties Becoming Rural

If we adopt the new OMB delineations (based upon the 2010 decennial Census data), a total of 34 counties (and county equivalents) that are currently considered urban would be considered rural beginning in CY 2021. Table 3 lists the 34 counties that would change to rural status if we finalize our proposal to implement the new OMB delineations.

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TABLE 3: COUNTIES THAT WOULD CHANGE TO RURAL STATUS

County Name	State	CBSA	CBSA Name
BAKER	GA	10500	Albany, GA
NEWTON	TX	13140	Beaumont-Port Arthur, TX
GOLDEN VALLEY	MT	13740	Billings, MT
WALKER	AL	13820	Birmingham-Hoover, AL
SIOUX	ND	13900	Bismarck, ND
FLOYD	VA	13980	Blacksburg-Christiansburg-Radford, VA
DE WITT	IL	14010	Bloomington, IL
FORD	IL	16580	Champaign-Urbana, IL
BUCKINGHAM	VA	16820	Charlottesville, VA
ARANSAS	TX	18580	Corpus Christi, TX
MC DONALD	MO	22220	Fayetteville-Springdale-Rogers, AR-MO
LE FLORE	OK	22900	Fort Smith, AR-OK
WELLS	IN	23060	Fort Wayne, IN
HOOD	TX	23104	Fort Worth-Arlington, TX
SOMERVELL	TX	23104	Fort Worth-Arlington, TX
HAMILTON	NE	24260	Grand Island, NE
BARRY	MI	24340	Grand Rapids-Wyoming, MI
KALAWAO	HI	27980	Kahului-Wailuku-Lahaina, HI
VAN BUREN	MI	28020	Kalamazoo-Portage, MI
SCOTT	IN	31140	Louisville/Jefferson County, KY-IN
TRIMBLE	KY	31140	Louisville/Jefferson County, KY-IN
BENTON	MS	32820	Memphis, TN-MS-AR
SIBLEY	MN	33460	Minneapolis-St. Paul-Bloomington, MN-WI
HICKMAN	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
GULF	FL	37460	Panama City, FL
CUSTER	SD	39660	Rapid City, SD
CAROLINE	VA	40060	Richmond, VA
WEBSTER	LA	43340	Shreveport-Bossier City, LA
PLYMOUTH	IA	43580	Sioux City, IA-NE-SD
UNION	SC	43900	Spartanburg, SC
PEND OREILLE	WA	44060	Spokane-Spokane Valley, WA
COLUMBIA	WA	47460	Walla Walla, WA
PULASKI	GA	47580	Warner Robins, GA
KINGMAN	KS	48620	Wichita, KS

(3) Rural Counties Becoming Urban

If we finalize our proposal to implement the new OMB delineations (based upon the 2010 decennial Census data), a total of 47 counties (and county equivalents) that are currently designated rural would be considered urban beginning in CY 2021. Table 4 lists the 47 counties that would change to urban status.

TABLE 4: COUNTIES THAT WOULD CHANGE TO URBAN STATUS

County Name	State	CBSA	CBSA Name
GREENE	AL	46220	Tuscaloosa, AL
WASHINGTON	AL	33660	Mobile, AL
FRANKLIN	AR	22900	Fort Smith, AR-OK
LEVY	FL	23540	Gainesville, FL
STEWART	GA	17980	Columbus, GA-AL
TALBOT	GA	17980	Columbus, GA-AL
POWER	ID	38540	Pocatello, ID
FULTON	IL	37900	Peoria, IL
JOHNSON	IL	16060	Carbondale-Marion, IL
FRANKLIN	IN	17140	Cincinnati, OH-KY-IN
PARKE	IN	45460	Terre Haute, IN
WARREN	IN	29200	Lafayette-West Lafayette, IN
BOONE	IA	11180	Ames, IA
JASPER	IA	19780	Des Moines-West Des Moines, IA
GEARY	KS	31740	Manhattan, KS
CARTER	KY	26580	Huntington-Ashland, WV-KY-OH
ASSUMPTION	LA	12940	Baton Rouge, LA
MOREHOUSE	LA	33740	Monroe, LA
FRANKLIN	MA	44140	Springfield, MA
IONIA	MI	24340	Grand Rapids-Kentwood, MI
SHIAWASSEE	MI	29620	Lansing-East Lansing, MI
LAKE	MN	20260	Duluth, MN-WI
COVINGTON	MS	25620	Hattiesburg, MS
HOLMES	MS	27140	Jackson, MS
STONE	MS	25060	Gulfport-Biloxi, MS
COOPER	MO	17860	Columbia, MO
HOWARD	MO	17860	Columbia, MO
STILLWATER	MT	13740	Billings, MT
ANSON	NC	16740	Charlotte-Concord-Gastonia, NC-SC
CAMDEN	NC	47260	Virginia Beach-Norfolk-Newport News, VA-NC
GRANVILLE	NC	20500	Durham-Chapel Hill, NC
HARNETT	NC	22180	Fayetteville, NC
OTTAWA	OH	45780	Toledo, OH
CLARENDON	SC	44940	Sumter, SC
GIBSON	TN	27180	Jackson, TN
STEWART	TN	17300	Clarksville, TN-KY
HARRISON	TX	30980	Longview, TX
STERLING	TX	41660	San Angelo, TX
KING AND QUEEN	VA	40060	Richmond, VA
MADISON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
JACKSON	WV	16620	Charleston, WV
MORGAN	WV	25180	Hagerstown-Martinsburg, MD-WV
LINCOLN	WI	48140	Wausau-Weston, WI
ADJUNTAS	PR	38660	Ponce, PR
LAS MARIAS	PR	32420	Mayagüez, PR

(4) Urban Counties Moving to a Different Urban CBSA

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to another urban CBSA under our proposal to adopt the new OMB delineations (Table 5). In other cases, applying the new OMB delineations would involve a change only in CBSA name or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19380 (Dayton, OH) would experience both a change to its number and its name, and become CBSA 19430 (Dayton-Kettering, OH), while all of its three constituent counties would remain the same. In other cases, only the name of the CBSA would be modified, and none of the currently assigned counties would be reassigned to a different urban CBSA. We are not discussing these proposed changes in this section because they are inconsequential changes with respect to the home health wage index.

TABLE 5: COUNTIES THAT WOULD CHANGE NAME OR CBSA NUMBER

Proposed CBSA Code	Proposed CBSA Title	Current CBSA Code	Current CBSA Title
10540	Albany-Lebanon, OR	10540	Albany, OR
11500	Anniston-Oxford, AL	11500	Anniston-Oxford-Jacksonville, AL
12060	Atlanta-Sandy Springs-Alpharetta, GA	12060	Atlanta-Sandy Springs-Roswell, GA
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock, TX
13460	Bend, OR	13460	Bend-Redmond, OR
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
14740	Bremerton-Silverdale-Port Orchard, WA	14740	Bremerton-Silverdale, WA
15380	Buffalo-Cheektowaga, NY	15380	Buffalo-Cheektowaga-Niagara Falls, NY
19430	Dayton-Kettering, OH	19380	Dayton, OH
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Mauldin, SC
25060	Gulfport-Biloxi, MS	25060	Gulfport-Biloxi-Pascagoula, MS
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Beaufort, SC
28700	Kingsport-Bristol, TN-VA	28700	Kingsport-Bristol-Bristol, TN-VA
31860	Mankato, MN	31860	Mankato-North Mankato, MN
33340	Milwaukee-Waukesha, WI	33340	Milwaukee-Waukesha-West Allis, WI
34940	Naples-Marco Island, FL	34940	Naples-Immokalee-Marco Island, FL
35660	Niles, MI	35660	Niles-Benton Harbor, MI
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Hayward-Berkeley, CA
36500	Olympia-Lacey-Tumwater, WA	36500	Olympia-Tumwater, WA
38060	Phoenix-Mesa-Chandler, AZ	38060	Phoenix-Mesa-Scottsdale, AZ
39150	Prescott Valley-Prescott, AZ	39140	Prescott, AZ
23224	Frederick-Gaithersburg-Rockville, MD	43524	Silver Spring-Frederick-Rockville, MD
44420	Staunton, VA	44420	Staunton-Waynesboro, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45940	Trenton-Princeton, NJ	45940	Trenton, NJ
46700	Vallejo, CA	46700	Vallejo-Fairfield, CA
47300	Visalia, CA	47300	Visalia-Porterville, CA
48140	Wausau-Weston, WI	48140	Wausau, WI
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL

However, in other cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs. In another type of change, some CBSAs have counties that would split off to become part of or to form entirely new labor market areas. Finally, in some cases, a CBSA would lose counties to another existing CBSA if we adopt the new OMB delineations. Table 6 lists the urban counties that would move from one urban CBSA to a newly or modified CBSA if we adopt the new OMB delineations.

TABLE 6: COUNTIES THAT WOULD CHANGE TO A DIFFERENT CBSA

Previous CBSA	New CBSA	County	State
16974	16984	COOK	IL
16974	16984	DU PAGE	IL
16974	16984	GRUNDY	IL
16974	20994	KENDALL	IL
16974	16984	MC HENRY	IL
16974	16984	WILL	IL
20524	39100	DUTCHESS	NY
20524	35614	PUTNAM	NY
26580	16620	LINCOLN	WV
28940	34100	GRAINGER	TN
35084	35154	SOMERSET	NJ
35614	35154	MIDDLESEX	NJ
35614	35154	MONMOUTH	NJ
35614	35154	OCEAN	NJ
35614	39100	ORANGE	NY
38660	49500	GUANICA	PR
38660	49500	GUAYANILLA	PR
38660	49500	PENUELAS	PR
38660	49500	YAUCO	PR

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b. Proposed Transition Period

As discussed above, overall, we believe that our proposal to adopt the revised OMB delineations for CY 2021 would result in HH PPS wage index values being more representative of the actual costs of labor in a given area. However, we also recognize that some home health agencies would experience decreases in their area wage index values as a result of our proposal. We also realize that many home health agencies would have higher area wage index values under our proposal.

To mitigate the potential impacts of proposed policies on home health agencies, we have in the past provided for transition periods when adopting changes that have significant payment implications, particularly large negative impacts. For example, we have proposed and finalized budget neutral transition policies to help mitigate negative impacts on home health agencies following the adoption of the new CBSA delineations based on the 2010 decennial census data in the CY 2015 home health final rule (79 FR 66032). Specifically, we implemented a 1-year 50/50 blended wage to the new OMB delineations. We applied a blended wage index for 1 year (CY 2015) for all geographic areas that would consist of a 50/50 blend of the wage index values using OMB's old area delineations and the wage index values using OMB's new area delineations. That is, for each county, a blended wage index was calculated equal to 50 percent of the CY 2015 wage index using the old labor market area delineation and 50 percent of the CY 2015 wage index using the new labor market area delineation, which resulted in an average of the two values. While we believed that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels, we also recognized that adopting such changes may cause some short-term instability in home health payments. Similar instability may result from the proposed wage policies herein, in particular for home health agencies that would be negatively impacted by the proposed adoption of the updates to the OMB delineations. We are proposing a transition policy to help mitigate any significant negative impacts that home health agencies may experience due to our proposal to adopt the revised OMB delineations.

Specifically, for CY 2021 as a transition, we are proposing to apply a 5 percent cap on any decrease in a geographic area's wage index value from the wage index value from the prior calendar year. This transition would allow the effects of our proposed adoption of the revised CBSA delineations to be phased in over 2 years, where the estimated reduction in a geographic area's wage index would be capped at 5 percent in CY 2021 (that is, no cap would be applied to the reduction in the wage index for the second year (CY 2022)). We believe a 5 percent cap on the overall decrease in a geographic area's wage index value, regardless of the circumstance causing the decline, would be appropriate transition for CY 2021 as it provides predictability in payment levels from CY 2020 to the upcoming CY 2021 and additional transparency because it is administratively simpler than our prior 1-year 50/50 blended wage index approach. Consistent with the policy finalized under the IPPS and proposed in other Medicare settings, we believe 5 percent is a reasonable level for the cap because it would effectively mitigate any significant decreases in a geographic area's wage index value for CY 2021 that could result from the adoption of the new OMB delineations. We believe a one year 5 percent cap provides home health agencies sufficient time to plan appropriately for CY 2022 and future years. Because we believe that using the new OMB delineations would create a more accurate payment adjustment for differences in area wage levels we are proposing to include a cap on the overall decrease in a geographic area's wage index value.

While there are some minimal impacts on certain HHAs as a result of this 5 percent cap proposal as shown in the regulatory impact analysis of this proposed rule, overall, the impact between the CY 2021 wage index using the old OMB delineations and the proposed CY 2021 wage index using the new OMB delineations would be 0.0 percent due to the wage index budget neutrality factor, which ensures that wage index updates and revisions are implemented in a budget-neutral manner. We invite comments on our proposed transition methodology.

The proposed wage index applicable to CY 2021 can be found on the CMS website at *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.* The proposed HH PPS wage index for CY 2021 would be effective January 1, 2021 through December 31, 2021.

The wage index file posted on the CMS website provides a crosswalk between the CY 2021 wage index using the current OMB delineations and the CY 2021 wage index using the proposed revised OMB delineations, as well as the proposed transition wage index values that would be in effect in CY 2021 if these proposed changes are finalized. It also shows each state and county and its corresponding proposed transition wage index along with the previous CBSA number, the new CBSA number or alternate identification number, and the new CBSA name.

3. Proposed CY 2021 Home Health Payment Rate Updates

a. Proposed CY 2021 Home Health Market Basket Update for HHAs

Section 1895(b)(3)(B) of the Act requires that the standard prospective payment amounts for CY 2021 be increased by a factor equal to the applicable home health market basket update for those HHAs that submit quality data as required by the Secretary. In the CY 2019 HH PPS final rule with comment period (83 FR 56425), we finalized a rebasing of the home health market basket to reflect 2016 Medicare cost report (MCR) data, the latest available and complete data on the actual structure of HHA costs. As such, based on the rebased 2016-based home health market basket, we finalized that the labor-related share is 76.1 percent and the non-labor-related share is 23.9 percent. A detailed description of how we rebased the HHA market basket is available in the CY 2019 HH PPS final rule with comment period (83 FR 56425 through 56436).

Section 1895(b)(3)(B) of the Act requires that in CY 2015 and in subsequent calendar years, except CY 2018 (under section 411(c) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. 114–10, enacted April 16, 2015)), and CY 2020 (under section 53110 of the Bipartisan Budget Act of 2018 (BBA) (Pub. L. 115–123, enacted February 9, 2018)), the market basket percentage under the HHA prospective payment system, as described in section 1895(b)(3)(B) of the Act, be annually adjusted by changes in economy-wide productivity. Section 1886(b)(3)(B)(xi)(II) of the Act defines the productivity adjustment to be equal to the 10-year moving average of change in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable fiscal year, calendar year, cost reporting period, or other annual period) (the ''MFP adjustment''). The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private nonfarm business MFP. Please visit *http://www.bls.gov/mfp,* to obtain the BLS historical published MFP data.

The proposed home health update percentage for CY 2021 is based on the estimated home health market basket update, specified at section 1895(b)(3)(B)(iii) of the Act, of 3.1 percent (based on IHS Global Insight Inc.'s first-quarter 2020 forecast with historical data through fourth-quarter 2019). The estimated CY 2021 home health market basket update of 3.1 percent is then reduced by a MFP adjustment, as mandated by the section 3401 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148), currently estimated to be 0.4 percentage point for CY 2021. In effect, the proposed home health payment update percentage for CY 2021 is a 2.7 percent increase. Section 1895(b)(3)(B)(v) of the Act requires that the home health update be decreased by 2 percentage points for those HHAs that do not submit quality data as required by the Secretary. For HHAs that do not submit the required quality data for CY 2021, the home health payment update would be 0.7 percent (2.7 percent minus 2 percentage points). If more recent data becomes available after the publication of this proposed rule and before the publication of the final rule (for example, more recent estimates of the home health market basket update and MFP adjustment), we would use such data, if appropriate, to determine the home health payment update percentage for CY 2021 in the final rule.

b. CY 2021 Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to provide appropriate adjustments to the proportion of the payment amount under the HH PPS that account for area wage differences, using adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of HH services. Since the inception of the HH PPS, we have used inpatient hospital wage data in developing a wage index to be applied to HH payments. We propose to continue this practice for CY 2021, as we continue to believe that, in the absence of HH-specific wage data that accounts for area differences, using inpatient hospital wage data is appropriate and reasonable for the HH PPS. As discussed above, we propose to use the FY 2021 pre-floor, pre-reclassified hospital wage index with the September 2018 OMB delineations as the CY 2021 wage adjustment to the labor portion of the HH PPS rates. For CY 2021, the updated wage data are for hospital cost reporting periods beginning on or after October 1, 2016, and before October 1, 2017 (FY 2017 cost report data). We apply the appropriate wage index value to the labor portion of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence).

To address those geographic areas in which there are no inpatient hospitals, and thus, no hospital wage data on which to base the calculation of the CY 2021 HH PPS wage index, we propose to continue to use the same methodology discussed in the CY 2007 HH PPS final rule (71 FR 65884) to address those geographic areas in which there are no inpatient hospitals. For rural areas that do not have inpatient hospitals, we propose to use the average wage index from all contiguous Core Based Statistical Areas (CBSAs) as a reasonable proxy. Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we do not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity to one another of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas). Instead, we propose to continue to use the most recent wage index previously available for that area. The most recent wage index previously available for rural Puerto Rico is 0.4047. For urban areas without inpatient hospitals, we use the average wage index of all urban areas within the state as a reasonable proxy for the wage index for that CBSA. For CY 2021, the only urban area without inpatient hospital wage data is Hinesville, GA (CBSA 25980). The CY 2021 adjusted, new delineations wage index value for Hinesville, GA is 0.8478.

On February 28, 2013, OMB issued Bulletin No. 13–01, announcing revisions to the delineations of MSAs, Micropolitan Statistical Areas, and CBSAs, and guidance on uses of the delineation of these areas. In the CY 2015 HH PPS final rule (79 FR 66085 through 66087), we adopted OMB's area delineations using a 1-year transition.

On August 15, 2017, OMB issued Bulletin No. 17–01 in which it announced that one Micropolitan Statistical Area, Twin Falls, Idaho, now qualifies as a Metropolitan Statistical Area. The new CBSA (46300) comprises the principal city of Twin Falls, Idaho in Jerome County, Idaho and Twin Falls County, Idaho. The CY 2021 HH PPS wage index value for CBSA 46300, Twin Falls, Idaho, will be 0.8586. Bulletin No. 17–01 is available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2017/b-17-01.pdf.*[4]

On April 10, 2018 OMB issued OMB Bulletin No. 18–03 which superseded the August 15, 2017 OMB Bulletin No. 17–01. On September 14, 2018, OMB issued OMB Bulletin No. 18–04 which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of OMB Bulletin No. 18–04 may be obtained at *https://www.whitehouse.gov/wpcontent/uploads/2018/09/Bulletin-18-04.pdf.*

As discussed previously the most recent OMB Bulletin (No. 20–01) was published on March 6, 2020 and is available at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf.*

The proposed CY 2021 wage index is available on the CMS website at: *https://www.cms.gov/Center/Provider-Type/Home-Health-Agency-HHA-Center.*

c. CY 2021 Annual Payment Update

(1) Background

The Medicare HH PPS has been in effect since October 1, 2000. As set forth in the July 3, 2000 final rule (65 FR 41128), the base unit of payment under the Medicare HH PPS was a national, standardized 60-day episode payment rate. As finalized in the CY 2019 HH PPS final rule with comment period (83 FR 56406), and as described in the CY 2020 HH PPS final rule with comment period (84 FR 60478), the unit of home health payment changed from a 60-day episode to a 30-day period effective for those 30-day periods beginning on or after January 1, 2020.

As set forth in § 484.220, we adjust the national, standardized prospective payment rates by a case-mix relative weight and a wage index value based on the site of service for the beneficiary. To provide appropriate adjustments to the proportion of the payment amount under the HH PPS to account for area wage differences, we apply the appropriate wage index value to the labor portion of the HH PPS rates. In the CY 2019 HH PPS final rule with comment period (83 FR 56435), we finalized rebasing the home health market basket to reflect 2016 Medicare cost report (MCR) data, the latest available and most complete data on the actual structure of HHA costs. We also finalized a revision to the labor-related share to reflect the 2016-based home health market basket compensation (Wages and Salaries plus Benefits) cost weight. We finalized that for CY 2019 and subsequent years, the labor-related share would be 76.1 percent and the non-labor-related share would be 23.9 percent. The following are the steps we take to compute the case-mix and wage-adjusted 30-day period rates for CY 2021:

- Multiply the national, standardized 30-day period rate by the patient's applicable case-mix weight.
- Divide the case-mix adjusted amount into a labor (76.1 percent) and a non-labor portion (23.9 percent).
- Multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.
- Add the wage-adjusted portion to the non-labor portion, yielding the case-mix and wage adjusted 30-day period rate, subject to any additional applicable adjustments.

We provide annual updates of the HH PPS rate in accordance with section 1895(b)(3)(B) of the Act. Section 484.225 sets forth the specific annual percentage update methodology. In accordance with section 1895(b)(3)(B)(v) of the Act and § 484.225(i), for an HHA that does not submit HH quality data, as specified by the Secretary, the unadjusted national prospective 30-day period rate is equal to the rate for the previous calendar year increased by the applicable HH payment update, minus 2 percentage points. Any reduction of the percentage change would apply only to the calendar year involved and would not be considered in computing the prospective payment amount for a subsequent calendar year.

The final claim that the HHA submits for payment determines the total payment amount for the period and whether we make an applicable adjustment to the 30-day case-mix and wage-adjusted payment amount. The end date of the 30-day period, as reported on the claim, determines which calendar year rates Medicare will use to pay the claim.

We may adjust a 30-day case-mix and wage-adjusted payment based on the information submitted on the claim to reflect the following:

- A low-utilization payment adjustment (LUPA) is provided on a per-visit basis as set forth in §§ 484.205(d)(1) and 484.230.
- A partial payment adjustment as set forth in §§ 484.205(d)(2) and 484.235.
- An outlier payment as set forth in §§ 484.205(d)(3) and 484.240.

(2) CY 2021 National, Standardized 30-Day Period Payment Amount

Section 1895(b)(3)(D)(i) of the Act, as added by section 51001(a)(2)(B) of the BBA of 2018, requires us to analyze data for CYs 2020 through 2026, after implementation of the 30-day unit of payment and new PDGM case-mix adjustment methodology, to annually determine the impact of the differences between assumed behavior changes and actual behavior changes on estimated aggregate expenditures. While we continue to monitor the impact of these changes on patient outcomes and Medicare expenditures, we believe it would be premature to release any information related to these issues based on the amount of data currently available and in light of the current public health emergency resulting from the COVID–19 pandemic outbreak. Therefore, for CY 2021, we are not proposing to make any additional

[4] ''Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas''. OMB Bulletin No. 17–01. August 15, 2017. *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2017/b-17-01.pdf.*

changes to the national, standardized 30-day payment rate in this proposed rule other than the routine rate updates outlined below. In future rulemaking, we plan to determine whether any changes need to be made to the national, standardized 30-day payment rate based on the analysis of the actual versus assumed behavior change.

Section 1895(b)(3)(A)(i) of the Act requires that the standard prospective payment rate and other applicable amounts be standardized in a manner that eliminates the effects of variations in relative case-mix and area wage adjustments among different home health agencies in a budget-neutral manner. To determine the CY 2021 national, standardized 30-day period payment rate, we apply a wage index budget neutrality factor and the home health payment update percentage discussed in section III.C.2. of this proposed rule.

To calculate the wage index budget neutrality factor, we simulated total payments for non-LUPA 30-day periods using the proposed CY 2021 wage index and compared it to our simulation of total payments for non-LUPA 30-day periods using the CY 2020 wage index. By dividing the total payments for non-LUPA 30-day periods using the CY 2021 wage index by the total payments for non-LUPA 30-day periods using the CY 2020 wage index, we obtain a wage index budget neutrality factor of 0.9987. We would apply the wage index budget neutrality factor of 0.9987 to the calculation of the CY 2021 national, standardized 30-day period payment rate.

We note that in past years, a case-mix budget neutrality factor was annually applied to the HH PPS base rates to account for the change between the previous year's case-mix weights and the newly recalibrated case-mix weights. Since CY 2020 was the first year of PDGM, we are not proposing to recalibrate the PDGM case-mix weights and; therefore, a case-mix budget neutrality factor is not needed. However, in future years under the PDGM, we would apply a case-mix budget neutrality factor with the annual payment update in order to account for the change between the previous year's PDGM case-mix weights and the new recalibrated PDGM case-mix weights.

Next, we would update the 30-day payment rate by the CY 2021 home health payment update percentage of 2.7 percent. The CY 2021 national, standardized 30-day period payment rate is calculated in Table 7.

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TABLE 7: CY 2021 NATIONAL, STANDARDIZED 30-DAY PERIOD PAYMENT AMOUNT

CY 2020 30-day Budget Neutral (BN) Standard Amount	Wage Index Budget Neutrality Factor	CY 2021 HH Payment Update	CY 2021 National, Standardized 30-Day Period Payment
$1,864.03	X 0.9987	X 1.027	$1,911.87

The CY 2021 national, standardized 30-day episode payment rate for an HHA that does not submit the required quality data is updated by the CY 2021 home health payment update of 2.7 percent minus 2 percentage points and is shown in Table 8.

TABLE 8: CY 2021 NATIONAL, STANDARDIZED 30-DAY PERIOD PAYMENT AMOUNT FOR HHAS THAT DO NOT SUBMIT THE QUALITY DATA

CY 2020 National, Standardized 30-Day Period Payment	Wage Index Budget Neutrality Factor	CY 2021 HH Payment Update Minus 2 Percentage Points	CY 2021 National, Standardized 30-Day Period Payment
$1,864.03	X 0.9987	X 1.007	$1,874.64

(3) CY 2021 National Per-Visit Rates for 30-Day Periods of Care

The national per-visit rates are used to pay LUPAs and are also used to compute imputed costs in outlier calculations. The per-visit rates are paid by type of visit or HH discipline. The six HH disciplines are as follows:

- Home health aide (HH aide).
- Medical Social Services (MSS).
- Occupational therapy (OT).
- Physical therapy (PT).
- Skilled nursing (SN).
- Speech-language pathology (SLP).

To calculate the CY 2021 national per-visit rates, we started with the CY 2020 national per-visit rates. Then we applied a wage index budget neutrality factor to ensure budget neutrality for LUPA per-visit payments. We calculated the wage index budget neutrality factor by simulating total payments for LUPA 30-day periods of care using the CY 2021 wage index and comparing it to simulated total payments for LUPA 30-day periods using the CY 2020 wage index. By dividing the total payments for LUPA 30-day periods using the CY 2021 wage index by the total payments for LUPA 30-day periods using the CY 2020 wage index, we obtained a wage index budget neutrality factor of 0.9985. We apply the wage index budget neutrality factor in order to calculate the CY 2021 national per-visit rates.

The LUPA per-visit rates are not calculated using case-mix weights. Therefore, no case-mix weights budget neutrality factor is needed to ensure budget neutrality for LUPA payments. Lastly, the per-visit rates for each discipline are updated by the CY 2021 home health payment update percentage of 2.7 percent. The national per-visit rates are adjusted by the wage index based on the site of service of the beneficiary. The per-visit payments for LUPAs are separate from the LUPA add-on payment amount, which is paid for episodes that occur as the only episode or initial episode in a sequence of adjacent episodes. The CY 2021 national per-visit rates for HHAs that submit the required quality data are updated by the CY 2021 HH payment update percentage of 2.7 percent and are shown in Table 9.

TABLE 9: CY 2021 NATIONAL PER-VISIT PAYMENT AMOUNTS

HH Discipline	CY 2020 Per-Visit Payment	Wage Index Budget Neutrality Factor	CY 2021 HH Payment Update	CY 2021 Per-Visit Payment
Home Health Aide	$67.78	X 0.9988	X 1.027	$69.53
Medical Social Services	$239.92	X 0.9988	X 1.027	$246.10
Occupational Therapy	$164.74	X 0.9988	X 1.027	$168.98
Physical Therapy	$163.61	X 0.9988	X 1.027	$167.83
Skilled Nursing	$149.68	X 0.9988	X 1.027	$153.54
Speech-Language Pathology	$177.84	X 0.9988	X 1.027	$182.42

The CY 2021 per-visit payment rates for HHAs that do not submit the required quality data are updated by the CY 2020 HH payment update percentage of 2.7 percent minus 2 percentage points and are shown in Table 10.

TABLE 10: CY 2020 NATIONAL PER-VISIT PAYMENT AMOUNTS FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

HH Discipline	CY 2020 Per-Visit Rates	Wage Index Budget Neutrality Factor	CY 2021 HH Payment Update Minus 2 Percentage Points	CY 2021 Per-Visit Rates
Home Health Aide	$67.78	X 0.9988	X 1.007	$68.17
Medical Social Services	$239.92	X 0.9988	X 1.007	$241.31
Occupational Therapy	$164.74	X 0.9988	X 1.007	$165.69
Physical Therapy	$163.61	X 0.9988	X 1.007	$164.56
Skilled Nursing	$149.68	X 0.9988	X 1.007	$150.55
Speech- Language Pathology	$177.84	X 0.9988	X 1.007	$178.87

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We are reminding stakeholders of the policies finalized in the CY 2020 HH PPS final rule with comment (84 FR 60544) with regards to the submission of Requests for Anticipated payment (RAPs) for CY 2021 and the implementation of a new one-time Notice of Admission (NOA) process starting in CY 2022. In that final rule, we finalized the lowering of the up-front payment made in response to a RAP to zero percent for all 30-day periods of care beginning on or after January 1, 2021 (84 FR 60544). For CY 2021, all HHAs (both existing and newly-enrolled HHAs) will submit a RAP at the beginning of each 30-day period establish the home health period of care in the common working file and also to trigger the consolidated billing edits. With the removal of the upfront RAP payment for CY 2021, we relaxed the required information for submitting the RAP for CY 2021 and also stated that the information required for submitting an NOA for CYs 2022 and beyond would mirror that of the RAP in CY 2021. Starting in CY 2022, HHAs will submit a one-time NOA that establishes the home health period of care and covers all contiguous 30-day periods of care until the individual is discharged from Medicare home health services. Also, for both the submission of the RAP in CY 2021 and the one-time NOA for CYs 2022 and beyond, we finalized a payment reduction if the HHA does not submit the RAP for CY 2021 or NOA for CYs 2022 and beyond within 5 calendar days from the start of care. That is, if an HHA fails to submit a timely RAP for CY 2021 or fails to submit a timely NOA for CYs 2022 and beyond, the reduction in payment amount would be equal to a one-thirtieth reduction to the wage and case-mix adjusted 30-day period payment amount for each day from the home health start of care date until the date the HHA submitted the RAP or NOA. In other words, the one-thirtieth reduction would be to the 30-day period adjusted payment amount, including any outlier payment, that the HHA otherwise would have received absent any reduction. For LUPA 30-day periods of care in which an HHA fails to submit a timely RAP or NOA, no LUPA payments would be made for days that fall within the period of care prior to the submission of the RAP or NOA. We stated that these days would be a provider liability, the payment reduction could not exceed the total payment of the claim, and that the provider may not bill the beneficiary for these days. For more in-depth information regarding the finalized policies associated with RAPs and the new one-time NOA process, we refer readers to the CY 2020 HH PPS final rule with comment (84 FR 60544).

(4) Low-Utilization Payment Adjustment (LUPA) Add-On Factors

Prior to the implementation of the 30-day unit of payment, LUPA episodes were eligible for a LUPA add-on payment if the episode of care was the first or only episode in a sequence of adjacent episodes. As stated in the CY 2008 HH PPS final rule, we stated that the average visit lengths in these initial LUPAs are 16 to 18 percent higher than the average visit lengths in initial non-LUPA episodes (72 FR 49848). LUPA episodes that occur as the only episode or as an initial episode in a sequence of adjacent episodes are adjusted by applying an additional amount to the LUPA payment before adjusting for area wage differences. In the CY 2014 HH PPS final rule (78 FR 72305), we changed the methodology for calculating the LUPA add-on amount by finalizing the use of three LUPA add-on factors: 1.8451 for SN; 1.6700 for PT; and 1.6266 for SLP. We multiply the per-visit payment amount for the first SN, PT, or SLP visit in LUPA episodes that occur as the only episode or an initial episode in a sequence of adjacent episodes by the appropriate factor to determine the LUPA add-on payment amount.

In the CY 2019 HH PPS final rule with comment period (83 FR 56440), in addition to finalizing a 30-day unit of payment, we finalized our policy of continuing to multiply the per-visit payment amount for the first skilled nursing, physical therapy, or speech-language pathology visit in LUPA periods that occur as the only period of care or the initial 30-day period of care in a sequence of adjacent 30-day periods of care by the appropriate add-on factor (1.8451 for SN, 1.6700 for PT, and 1.6266 for SLP) to determine the LUPA add-on payment amount for 30-day periods of care under the PDGM. For example, using the proposed CY 2021 per-visit payment rates for those HHAs that submit the required quality data, for LUPA periods that occur as the only period or an initial period in a sequence of adjacent periods, if the first skilled visit is SN, the payment for that visit would be $283.30 (1.8451 multiplied by $153.54), subject to area wage adjustment.

d. Rural Add-On Payments for CY 2021 and CY 2022

(1) Background

Section 421(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173) required, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes or visits ending on or after April 1, 2004, and before April 1, 2005, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 5 percent. Section 5201 of the Deficit Reduction Act of 2003 (DRA) (Pub. L. 108–171) amended section 421(a) of the MMA. The amended section 421(a) of the MMA required, for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), on or after January 1, 2006, and before January 1, 2007, that the Secretary increase the payment amount otherwise made under section 1895 of the Act for those services by 5 percent.

Section 3131(c) of the Affordable Care Act amended section 421(a) of the MMA to provide an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for HH services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending on or after April 1, 2010, and before January 1, 2016. Section 210 of the MACRA amended section 421(a) of the MMA to extend the rural add-on by providing an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for HH services provided in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending before January 1, 2018.

Section 50208(a) of the BBA of 2018 amended section 421(a) of the MMA to extend the rural add-on by providing an increase of 3 percent of the payment amount otherwise made under section 1895 of the Act for HH services provided in a rural area (as defined in section 1886(d)(2)(D) of the Act), for episodes and visits ending before January 1, 2019.

(2) Rural Add-On Payments for CYs 2019 Through CY 2022

Section 50208(a)(1)(D) of the BBA of 2018 added a new subsection (b) to section 421 of the MMA to provide rural add-on payments for episodes or visits ending during CYs 2019 through 2022. It also mandated implementation of a new methodology for applying those payments. Unlike previous rural add-ons, which were applied to all rural areas uniformly, the extension provided varying add-on amounts depending on the rural county (or equivalent area) classification by classifying each rural county (or equivalent area) into one of three distinct categories: (1) Rural counties and equivalent areas in the highest quartile of all counties and equivalent areas based on the number of Medicare home health episodes furnished per 100 individuals who are entitled to, or enrolled for, benefits under Part A of Medicare or enrolled for benefits under Part B of Medicare only, but not enrolled in a Medicare Advantage plan under Part C of Medicare (the ''High utilization'' category); (2) rural counties and equivalent areas with a population density of 6 individuals or fewer per square mile of land area and are not included in the ''High utilization'' category (the ''Low population density'' category); and (3) rural counties and equivalent areas not in either the ''High utilization'' or ''Low population density'' categories (the ''All other'' category).

In the CY 2019 HH PPS final rule with comment period (83 FR 56443), CMS finalized policies for the rural add-on payments for CY 2019 through CY 2022, in accordance with section 50208 of the BBA of 2018. The CY 2019 HH PPS proposed rule (83 FR 32373) described the provisions of the rural add-on payments, the methodology for applying the new payments, and outlined how we categorized rural counties (or equivalent areas) based on claims data, the Medicare Beneficiary Summary File and Census data. The data used to categorize each county or equivalent area is available in the Downloads section associated with the publication of this rule at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HomeHealthPPS/Home-Health-Prospective-Payment-System-Regulations-and-Notices.html.* In addition, an Excel file containing the rural county or equivalent area name, their Federal Information Processing Standards (FIPS) state and county codes, and their designation into one of the three rural add-on categories is available for download.

The HH PRICER module, located within CMS' claims processing system, will increase the CY 2021 30-day base payment rates, described in section III.C.3.b. of this proposed rule, by the appropriate rural add-on percentage prior to applying any case-mix and wage index adjustments. The CY 2019 through CY 2022 rural add-on percentages outlined in law are shown in Table 11.

TABLE 11: HH PPS RURAL ADD-ON PERCENTAGES, CYs 2021-2022

Category	CY 2019	CY 2020	CY 2021	CY 2022
High utilization	1.5%	0.5%	None	None
Low population density	4.0%	3.0%	2.0%	1.0%
All other	3.0%	2.0%	1.0%	None

e. Proposed Payments for High-Cost Outliers Under the HH PPS

(1) Background

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the home health payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Under the HH PPS, outlier payments are made for episodes whose estimated costs exceed a threshold amount for each Home Health Resource Group (HHRG). The episode's estimated cost was established as the sum of the national wage-adjusted per visit payment amounts delivered during the episode. The outlier threshold for each case-mix group or partial episode payment (PEP) adjustment is defined as the 60-day episode payment or PEP adjustment for that group plus a fixed-dollar loss (FDL) amount. For the purposes of the HH PPS, the FDL amount is calculated by multiplying the HH FDL ratio by a case's wage-adjusted national, standardized 60-day episode payment rate, which yields an FDL dollar amount for the case. The outlier threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and wage-adjusted FDL amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated cost that surpasses the wage-adjusted threshold. The proportion of additional costs over the outlier threshold amount paid as outlier payments is referred to as the loss-sharing ratio.

As we noted in the CY 2011 HH PPS final rule (75 FR 70397 through 70399), section 3131(b)(1) of the Affordable Care Act amended section 1895(b)(3)(C) of the Act to require that the Secretary reduce the HH PPS payment rates such that aggregate HH PPS payments were reduced by 5 percent. In addition, section 3131(b)(2) of the Affordable Care Act amended section 1895(b)(5) of the Act by redesignating the existing language as section 1895(b)(5)(A) of the Act and revising the language to state that the total amount of the additional payments or payment adjustments for outlier episodes could not exceed 2.5 percent of the estimated total HH PPS payments for that year. Section 3131(b)(2)(C) of the Affordable Care Act also added section 1895(b)(5)(B) of the Act, which capped outlier payments as a percent of total payments for each HHA for each year at 10 percent.

As such, beginning in CY 2011, we reduced payment rates by 5 percent and targeted up to 2.5 percent of total estimated HH PPS payments to be paid as outliers. To do so, we first returned the 2.5 percent held for the target CY 2010 outlier pool to the national, standardized 60-day episode rates, the national per visit rates, the LUPA add-on payment amount, and the NRS conversion factor for CY 2010. We then reduced the rates by 5 percent as required by section 1895(b)(3)(C) of the Act, as amended by section 3131(b)(1) of the Affordable Care Act. For CY 2011 and subsequent calendar years we targeted up to 2.5 percent of estimated total payments to be paid as outlier payments, and apply a 10-percent agency-level outlier cap.

In the CY 2017 HH PPS proposed and final rules (81 FR 43737 through 43742 and 81 FR 76702), we described our concerns regarding patterns observed in home health outlier episodes. Specifically, we noted that the methodology for calculating home health outlier payments may have created a financial incentive for providers to increase the number of visits during an episode of care in order to surpass the outlier threshold; and simultaneously created a disincentive for providers to treat medically complex beneficiaries who require fewer but longer visits. Given these concerns, in the CY 2017 HH PPS final rule (81 FR 76702), we finalized changes to the methodology used to calculate outlier payments, using a cost-per-unit approach rather than a cost-per-visit approach. This change in methodology allows for more accurate payment for outlier episodes, accounting for both the number of visits during an episode of care and also the length of the visits provided. Using this approach, we now convert the national per-visit rates into per 15-minute unit rates. These per 15-minute unit rates are used to calculate the estimated cost of an episode to determine whether the claim will receive an outlier payment and the amount of payment for an episode of care. In conjunction with our finalized policy to change to a cost-per-unit approach to estimate episode costs and determine whether an outlier episode should receive outlier payments, in the CY 2017 HH PPS final rule we also finalized the implementation of a cap on the amount of time per day that would be counted toward the estimation of an episode's costs for outlier calculation purposes (81 FR 76725). Specifically, we limit the amount of time per day (summed across the six disciplines of care) to 8 hours (32 units) per day when estimating the cost of an episode for outlier calculation purposes.

We will publish the cost-per-unit amounts for CY 2021 in the rate update change request, which is issued after the publication of the CY 2021 HH PPS final rule. We note that in the CY 2017 HH PPS final rule (81 FR 76724), we stated that we did not plan to re-estimate the average minutes per visit by discipline every year. Additionally, we noted that the per unit rates used to estimate an episode's cost will be updated by the home health update percentage each year, meaning we would start with the national per visit amounts for the same calendar year when calculating the cost-per-unit used to determine the cost of an episode of care (81 FR 76727). We note that we will continue to monitor the visit length by discipline as more recent data become available, and we may propose to update the rates as needed in the future.

In the CY 2019 HH PPS final rule with comment period (83 FR 56521), we finalized a policy to maintain the current methodology for payment of high-cost outliers upon implementation of the PDGM beginning in CY 2020 and that we will calculate payment for high-cost outliers based upon 30-day periods of care.

(2) Fixed Dollar Loss (FDL) Ratio for CY 2021

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of periods that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio, and therefore, increase outlier payments for qualifying outlier periods. Alternatively, a lower FDL ratio means that more periods can qualify for outlier payments, but outlier payments per period must then be lower.

The FDL ratio and the loss-sharing ratio must be selected so that the estimated total outlier payments do not exceed the 2.5 percent aggregate level (as required by section 1895(b)(5)(A) of the Act). Historically, we have used a value of 0.80 for the loss-sharing ratio which, we believe, preserves incentives for agencies to attempt to provide care efficiently for outlier cases. With a loss-sharing ratio of 0.80, Medicare pays 80 percent of the additional estimated costs that exceed the outlier threshold amount. Given the statutory requirement that total outlier payments not exceed 2.5 percent of the total payments estimated to be made under the HH PPS, we finalized that the FDL ratio for 30-day periods of care in CY 2020 would need to be set at 0.63 for 30-day periods of care based on our simulations looking at both 60-day episodes that would span into CY 2020 and 30-day periods that begin in CY 2020. Given that CY 2020 is the first year of the PDGM and the change to a 30-day unit of payment, for CY 2021, we are proposing to maintain the fixed-dollar loss ratio of 0.63, as finalized for CY 2020.

4. The Use of Technology Under the Medicare Home Health Benefit

In the first COVID–19 PHE IFC (85 FR 19230), we changed the plan of care requirements at § 409.43(a) on an interim basis, for the purposes of Medicare payment, to state that the plan of care must include any provision of remote patient monitoring or other services furnished via a telecommunications system and describe how the use of such technology is tied to the patient-specific needs as identified in the comprehensive assessment and will help to achieve the goals outlined on the plan of care. The amended plan of care requirements at § 409.43(a) also state that these services cannot substitute for a home visit ordered as part of the plan of care and cannot be considered a home visit for the purposes of patient eligibility or payment, in accordance with section 1895(e)(1)(A) of the Act. In the first COVID–19 PHE IFC, we stated that we believe that this change will help to increase access to technologies, such as telemedicine and remote patient monitoring during the public health emergency for the COVID–19 pandemic (85 FR 19250).

Additionally, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136) included section 3707 related to encouraging use of telecommunications systems for home health services furnished during the emergency period. Specifically, section 3707 of the CARES Act requires, with respect to home health services furnished during the PHE for COVID–19, that the Secretary shall consider ways to encourage the use of telecommunications systems, including for remote patient monitoring as described in § 409.46(e) and other communications or monitoring services, consistent with the plan of care for the individual, including by clarifying guidance and conducting outreach, as appropriate. We believe that the policies finalized on an interim basis meet the requirements of section 3707 of the CARES Act.

We have also heard from stakeholders about the important role that technologies can play in the delivery of appropriate home health services outside of the current pandemic. In the first COVID–19 PHE IFC (85 FR 19230), we discussed the various applications of the technology that HHAs and industry representatives have reported utilizing prior to taking the steps necessary in meeting the social distancing required during the public health emergency for the COVID–19 pandemic. Although section 1895(e)(1)(A) of the Act prohibits payment for services furnished via a telecommunications system if such services substitute for in-person home health services ordered as part of a plan of care, we understand that there are ways in which technology can be further utilized to improve patient care, better leverage advanced practice clinicians, and improve outcomes while potentially making the provision of home health care more efficient. We acknowledged that technology has become an integral part of medicine across the entire spectrum of healthcare, and that telemedicine, in particular has the potential to play a large role in enhancing the delivery of healthcare in the home. In the first COVID–19 PHE IFC, we included the following illustrative example of in-person visits and the use of telecommunications technology:

A patient recently discharged from the hospital after coronary bypass surgery was receiving home health skilled nursing visits 3 times a week for medication management, teaching and assessment. The patient developed a fever, cough, sore throat and moderate shortness of breath and now has a confirmed COVID–19 diagnosis, which the doctor has determined can be safely managed at home with home health services. The patient has been prescribed new medications for symptom management and oxygen therapy to support the patient's respiratory status. The patient's home health plan of care was updated to include an in-person skilled nursing visit once a week to assess the patient and to monitor for worsening symptoms. The plan of care was updated also to include a video consultation twice a week between the skilled nurse and the patient for medication management, teaching and assessment, as well as to obtain oxygen saturation readings that the patient relays to the nurse during the consultation.

With regards to payment under the HH PPS, if the primary reason for home health care is to provide care to manage the symptoms resulting from COVID–19, this 30-day period of care would be grouped into the Medication, Management, Teaching and Assessment (MMTA)-Respiratory clinical group, and it would be an early 30-day period of care with an institutional admission source. Assuming a medium functional impairment level with ''low'' comorbidities, the low-utilization payment adjustment (LUPA) threshold would be 4 visits. Regardless if the patient continued to receive the original 3 in-person skilled nursing visits per week (12 visits total in the 30-day period) rather than the once per-week in-person skilled nursing visits (4 visits total in the 30-day period), the HHA would still receive the full 30-day payment amount (rather than paying per visit if the total number of visits was below the LUPA threshold). In this example, the use of technology is not a substitute for the provision of in-person visits as ordered on the plan of care, as the plan of care was updated to reflect a change in the frequency of the in-person visits and to include ''virtual visits'' using telecommunications technology as part of the management of the home health patient. We believe the provision of in-person visits and encounters using telecommunications technology can also apply outside of the public health emergency. Decisions regarding the use of telecommunications technology would be determined based on patient needs identified during the comprehensive assessment and would be included as part of the individualized plan of care established and reviewed by the physician who establishes the plan of care.

For these reasons, we are proposing to permanently finalize the amendment to § 409.43(a) as outlined in the first COVID–19 PHE IFC (85 FR 19230). We are also proposing to allow HHAs to continue to report the costs of telehealth/telemedicine as allowable administrative costs on line 5 of the home health agency cost report. We propose to modify the instructions regarding this line on the cost report to reflect a broader use of telecommunications technology. Additionally, we propose to amend § 409.46(e) to include not only remote patient monitoring, but other communications or monitoring services, consistent with the plan of care for the individual. Because stakeholders have identified significant up-front costs in incorporating and evaluating various forms of telecommunications systems into home health care, this would allow HHAs to confidently plan for the continued inclusion of telecommunications systems under the Medicare home health benefit and increase the tools available to promote patient involvement and autonomy and potentially more efficient home health care.

We remind stakeholders that access to telecommunications technology must be inclusive, especially for those patients who may have disabilities where the use of technology may be more challenging. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act protect qualified individuals with disabilities from discrimination on the basis of disability in the provision of benefits and services. Concerns related to potential discrimination issues under 504 should be referred to the Office of Civil Rights for further review. Likewise, we remind HHAs that the home health CoPs at § 484.50(f)(1) require that information must be provided to persons with disabilities in plain language and in a manner that is accessible and timely, including accessible websites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act. This means that the HHA must meet these requirements to ensure access to and use of telecommunications as required by law. Appendix B of the State Operations Manual (regarding Home Health services) provides detailed examples of ''auxiliary aids and services''.[5]

We also reiterate the expectation that services provided by telecommunications technology are services that could also be provided through an in-person visit. If there is a service that cannot be provided through telecommunications technology (for example, wound care which requires in-person, hands-on care), the HHA must make an in-person visit to furnish such services. Furthermore, a HHA cannot discriminate against any individual who is unable or unwilling to receive home health services that could be provided via telecommunications technology. In those circumstances, the HHA must provide such services through in-person visits as the intent of the Medicare home health benefit as defined in section 1861(m) of the Act is to provide items and services on a visiting basis in the individual's home.

We solicit comments on our proposal to finalize the amendment to § 409.43(a) as outlined in the first COVID–19 PHE IFC (85 FR 19230) to allow the use of telecommunications technology included as part of the home health plan of care as long as the use of such technology does not substitute for ordered in-person visits. We also solicit comments on our proposal to amend the language at § 409.46(e) allowing a broader use of telecommunications technology to be reported as an allowable administrative cost on the home health agency cost report.

IV. Other Home Health Related Provisions

A. Home Health Quality Reporting Program (HH QRP)

1. Background and Statutory Authority

The HH QRP is authorized by section 1895(b)(3)(B)(v) of the Act. Section 1895(b)(3)(B)(v)(II) of the Act requires that, for 2007 and subsequent years, each HHA submit to the Secretary in a form and manner, and at a time, specified by the Secretary, such data that the Secretary determines are appropriate for the measurement of health care quality. To the extent that an HHA does not submit data in accordance with this clause, the Secretary shall reduce the home health market basket percentage increase applicable to the HHA for such year by 2 percentage points. As provided at section 1895(b)(3)(B)(vi) of the Act, depending on the market basket percentage increase applicable for a particular year, the reduction of that increase by 2 percentage points for failure to comply with the requirements of the HH QRP and further reduction of the increase by the productivity adjustment (except in 2018 and 2020) described in section 1886(b)(3)(B)(xi)(II) of the Act may result in the home health market basket percentage increase being less than 0.0 percent for a year, and may result in payment rates under the Home Health PPS for a year being less than payment rates for the preceding year.

For more information on the policies we have adopted for the HH QRP, we refer readers to the following rules:

- CY 2007 HH PPS final rule (71 FR 65888 through 65891).
- CY 2008 HH PPS final rule (72 FR 49861 through 49864).
- CY 2009 HH PPS update notice (73 FR 65356).
- CY 2010 HH PPS final rule (74 FR 58096 through 58098).
- CY 2011 HH PPS final rule (75 FR 70400 through 70407).
- CY 2012 HH PPS final rule (76 FR 68574).
- CY 2013 HH PPS final rule (77 FR 67092).
- CY 2014 HH PPS final rule (78 FR 72297).
- CY 2015 HH PPS final rule (79 FR 66073 through 66074).
- CY 2016 HH PPS final rule (80 FR 68690 through 68695).
- CY 2017 HH PPS final rule (81 FR 76752).
- CY 2018 HH PPS final rule (82 FR 51711 through 51712).
- CY 2019 HH PPS final rule with comment period (83 FR 56547).
- CY 2020 HH PPS final rule with comment period (84 FR 60554).

2. General Considerations Used for the Selection of Quality Measures for the HH QRP

[5] State Operations Manual Appendix B—Guidance to Surveyors: Home Health Agencies. *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_b_hha.pdf.*

For a detailed discussion of the considerations we historically use for measure selection for the HH QRP quality, resource use, and others measures, we refer readers to the CY 2016 HH PPS final rule (80 FR 68695 through 68696). In the CY 2019 HH PPS final rule with comment (83 FR 56548 through 56550) we also finalized the factors we consider for removing previously adopted HH QRP measures.

3. Quality Measures Currently Adopted for the CY 2022 HH QRP

The HH QRP currently includes 20 measures for the CY 2022 program year, as outlined in Table 28 of the CY 2020 HH PPS final rule (84 FR 60555).[6]

TABLE 28: MEASURES CURRENTLY ADOPTED FOR THE CY 2022 HH QRP

Short Name	Measure Name & Data Source
OASIS-based	
Ambulation	Improvement in Ambulation/Locomotion (NQF #0167).
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) (NQF #0674).
Application of Functional Assessment	Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (NQF #2631).
Bathing	Improvement in Bathing (NQF #0174).
Bed Transferring	Improvement in Bed Transferring (NQF # 0175).
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues- Post Acute Care (PAC) HH QRP.
Drug Education	Drug Education on All Medications Provided to Patient/Caregiver during All Episodes of Care.
Dyspnea	Improvement in Dyspnea.
Influenza	Influenza Immunization Received for Current Flu Season
Oral Medications	Improvement in Management of Oral Medications (NQF #0176).
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care
Timely Care	Timely Initiation Of Care (NQF #0526).
TOH - Provider	Transfer of Health Information to Provider-Post-Acute Care
TOH - Patient	Transfer of Health Information to Patient-Post-Acute Care
Claims-based	
ACH	Acute Care Hospitalization During the First 60 Days of HH (NQF #0171).
DTC	Discharge to Community-Post Acute Care (PAC) Home Health (HH) Quality Reporting Program (QRP) (NQF #3477)
ED Use	Emergency Department Use without Hospitalization During the First 60 Days of HH (NQF #0173).
MSPB	Total Estimated Medicare Spending Per Beneficiary (MSPB)—Post Acute Care (PAC) HH QRP.
PPR	Potentially Preventable 30-Day Post-Discharge Readmission Measure for HH Quality Reporting Program.
HHCAHPS-based	
CAHPS Home Health Survey	CAHPS® Home Health Care Survey (experience with care) (NQF #0517) - How often the HH team gave care in a professional way. - How well did the HH team communicate with patients. - Did the HH team discuss medicines, pain, and home safety with patients. - How do patients rate the overall care from the HHA. - Will patients recommend the HHA to friends and family.

[6] The HHCAHPS has five component questions that together are used to represent one NQF-endorsed measure.

There are no proposals or updates in this proposed rule for the Home Health Quality Reporting Program.

B. Proposed Change to the Conditions of Participation (CoPs) OASIS Requirements

Section 484.45(c)(2) of the home health agency conditions of participation (CoPs) requires that new home health agencies must successfully transmit test data to the Quality Improvement & Evaluation System (QIES) or CMS OASIS contractor as part of the initial process for becoming a Medicare-participating home health agency. The previous data submission system limited HHAs to only 2 users who had permission to access the system, and required the use of a virtual private network (VPN) to access CMSNet. New HHAs do not yet have a CMS Certification Number (CCN). Therefore, they used a fake or test CCN in order to transmit test data to the Quality Improvement & Evaluation System Assessment Submission & Processing (QIES ASAP) System or CMS OASIS contractor.

CMS recently enhanced the system that HHAs use to submit OASIS data to be more user friendly. The new CMS data submission system, internet Quality Improvement & Evaluation System (iQIES), is now internet-based. Therefore, HHAs are no longer limited to 2 users for submission of assessment data since VPN and CMSNet are no longer required. These factors make the data submission process simpler. In addition, the new iQIES data submission system requires users to include a valid CCN with their iQIES user role request that will allow them to submit their OASIS assessment data to CMS; the new data system no longer supports the use of test or fake CCNs, making it impossible for new HHAs that do not yet have a CCN to submit test data.

The transition to the new data submission system, the simpler data submission process and the inability to use test or fake CCNs has rendered the requirement at § 484.45(c)(2) obsolete. Therefore, we are proposing to remove the requirement at § 484.45(c)(2). HHAs must be able to submit assessments in order for the claims match process to occur and relay the data needed for payment under the PDGM system. This link to the payment process gives HHAs strong incentive to ensure that they can successfully submit their OASIS assessments in the absence of this regulatory requirement.

V. Home Infusion Therapy

A. Medicare Coverage of Home Infusion Therapy Services

1. Background and Overview

a. Background

Section 5012 of the 21st Century Cures Act (''the Cures Act'') (Pub. L. 114–255), which amended sections 1834(u), 1861(s)(2) and 1861(iii) of the Act, established a new Medicare home infusion therapy services benefit. The Medicare home infusion therapy services benefit covers the professional services, including nursing services, furnished in accordance with the plan of care, patient training and education not otherwise covered under the durable medical equipment benefit, remote monitoring, and monitoring services for the provision of home infusion therapy and home infusion drugs furnished by a qualified home infusion therapy supplier. This benefit will ensure consistency in coverage for home infusion benefits for all Medicare beneficiaries.

Section 50401 of the Bipartisan Budget Act (BBA) of 2018 amended section 1834(u) of the Act by adding a new paragraph (7) that established a home infusion therapy services temporary transitional payment for eligible home infusion suppliers for certain items and services furnished in coordination with the furnishing of transitional home infusion drugs beginning January 1, 2019. This temporary payment covers the cost of the same items and services, as defined in section 1861(iii)(2)(A) and (B) of the Act, related to the administration of home infusion drugs. The temporary transitional payment began on January 1, 2019 and will end the day before the full implementation of the home infusion therapy services benefit on January 1, 2021, as required by section 5012 of the 21st Century Cures Act.

In the CY 2019 HH PPS final rule with comment period (83 FR 56406), we finalized the implementation of temporary transitional payments for home infusion therapy services to begin on January 1, 2019. In addition, we implemented the establishment of regulatory authority for the oversight of national accrediting organizations (AOs) that accredit home infusion therapy suppliers, and their CMS-approved home infusion therapy accreditation programs.

b. Overview of Infusion Therapy

Infusion drugs can be administered in multiple health care settings, including inpatient hospitals, skilled nursing facilities (SNFs), hospital outpatient departments (HOPDs), physicians' offices, and in the home. Traditional fee-for-service (FFS) Medicare provides coverage for infusion drugs, equipment, supplies, and administration services. However, Medicare coverage requirements and payment vary for each of these settings. Infusion drugs, equipment, supplies, and administration are all covered by Medicare in the inpatient hospital, SNFs, HOPDs, and physicians' offices.

Under the various Part A prospective payment systems, Medicare payment for the drugs, equipment, supplies, and services are bundled, meaning a single payment is made on the basis of expected costs for clinically-defined episodes of care. For example, if a beneficiary is receiving an infusion drug during an inpatient hospital stay, the Part A payment for the drug, supplies, equipment, and drug administration is included in the diagnosis-related group (DRG) payment to the hospital under the Medicare inpatient prospective payment system. Beneficiaries are liable for the Medicare inpatient hospital deductible and no coinsurance for the first 60 days. Similarly, if a beneficiary is receiving an infusion drug while in a SNF under a Part A stay, the payment for the drug, supplies, equipment, and drug administration are included in the SNF prospective payment system payment. After 20 days of SNF care, there is a daily beneficiary cost-sharing amount through day 100 when the beneficiary becomes responsible for all costs for each day after day 100 of the benefit period.

Under Medicare Part B, certain items and services are paid separately while other items and services may be packaged into a single payment together. For example, in an HOPD and in a physician's office, the drug is paid separately, generally at the average sales price (ASP) plus 6 percent (77 FR 68210). Medicare also makes a separate payment to the physician or hospital outpatient departments (HOPD) for administering the drug. The separate payment for infusion drug administration in an HOPD and in a physician's office generally includes a base payment amount for the first hour and a payment add-on that is a different amount for each additional hour of administration. The beneficiary is responsible for the 20 percent coinsurance under Medicare Part B.

Medicare FFS covers outpatient infusion drugs under Part B, ''incident to'' a physician's service, provided the drugs are not usually self-administered by the patient. Drugs that are ''not usually self-administered,'' are defined in our manual according to how the

Medicare population as a whole uses the drug, not how an individual patient or physician may choose to use a particular drug. For the purpose of this exclusion, the term ''usually'' means more than 50 percent of the time for all Medicare beneficiaries who use the drug. The term ''by the patient'' means Medicare beneficiaries as a collective whole. Therefore, if a drug is self-administered by more than 50 percent of Medicare beneficiaries, the drug is generally excluded from Part B coverage. This determination is made on a drug-by-drug basis, not on a beneficiary-by-beneficiary basis.[7] The MACs update Self-Administered Drug (SAD) exclusion lists on a quarterly basis.[8]

Home infusion therapy involves the intravenous or subcutaneous administration of drugs or biologicals to an individual at home. Certain drugs can be infused in the home, but the nature of the home setting presents different challenges than the settings previously described. Generally, the components needed to perform home infusion include the drug (for example, antivirals, immune globulin), equipment (for example, a pump), and supplies (for example, tubing and catheters). Likewise, nursing services are usually necessary to train and educate the patient and caregivers on the safe administration of infusion drugs in the home. Visiting nurses often play a large role in home infusion. These nurses typically train the patient or caregiver to self-administer the drug, educate on side effects and goals of therapy, and visit periodically to assess the infusion site and provide dressing changes. Depending on patient acuity or the complexity of the drug administration, certain infusions may require more training and education, especially those that require special handling or pre-or post-infusion protocols. The home infusion process typically requires coordination among multiple entities, including patients, physicians, hospital discharge planners, health plans, home infusion pharmacies, and, if applicable, home health agencies.

With regard to payment for home infusion therapy under traditional Medicare, drugs are generally covered under Part B or Part D. Certain infusion pumps, supplies (including home infusion drugs and the services required to furnish the drug, (that is, preparation and dispensing), and nursing are covered in some circumstances through the Part B durable medical equipment (DME) benefit, the Medicare home health benefit, or some combination of these benefits. In accordance with section 50401 of the BBA of 2018, beginning on January 1, 2019, for CYs 2019 and 2020, Medicare implemented temporary transitional payments for home infusion therapy services furnished in coordination with the furnishing of transitional home infusion drugs. This payment, for home infusion therapy services, is only made if a beneficiary is furnished certain drugs and biologicals administered through an item of covered DME, and payable only to suppliers enrolled in Medicare as pharmacies that provide external infusion pumps and external infusion pump supplies (including the drug). With regard to the coverage of the home infusion drugs, Medicare Part B covers a limited number of home infusion drugs through the DME benefit if: (1) The drug is necessary for the effective use of an external infusion pump classified as DME and determined to be reasonable and necessary for administration of the drug; and (2) the drug being used with the pump is itself reasonable and necessary for the treatment of an illness or injury.

Only certain types of infusion pumps are covered under the DME benefit. In order for the infusion pump to be covered under the DME benefit, it must be appropriate for use in the home (§ 414.202). The Medicare National Coverage Determinations Manual, chapter 1, part 4, section 280.14 describes the types of infusion pumps that are covered under the DME benefit.[9] For DME external infusion pumps, Medicare Part B covers the infusion drugs and other supplies and services necessary for the effective use of the pump. Through the Local Coverage Determination (LCD) for External Infusion Pumps (L33794), the DME Medicare administrative contractors (MACs) specify the details of which infusion drugs are covered with these pumps. Examples of covered Part B DME infusion drugs include, among others, certain IV drugs for heart failure and pulmonary arterial hypertension, immune globulin for primary immune deficiency (PID), insulin, antifungals, antivirals, and chemotherapy, in limited circumstances.

c. Home Infusion Therapy Legislation

(1) 21st Century Cures Act

Effective January 1, 2021, section 5012 of the 21st Century Cures Act (Pub. L. 114–255) (Cures Act) created a separate Medicare Part B benefit category under section 1861(s)(2)(GG) of the Act for coverage of home infusion therapy services needed for the safe and effective administration of certain drugs and biologicals administered intravenously, or subcutaneously for an administration period of 15 minutes or more, in the home of an individual, through a pump that is an item of DME. The infusion pump and supplies (including home infusion drugs) will continue to be covered under the Part B DME benefit. Section 1861(iii)(2) of the Act defines home infusion therapy to include the following items and services: The professional services, including nursing services, furnished in accordance with the plan, training and education (not otherwise paid for as DME), remote monitoring, and other monitoring services for the provision of home infusion therapy and home infusion drugs furnished by a qualified home infusion therapy supplier, which are furnished in the individual's home. Section 1861(iii)(3)(B) of the Act defines the patient's home to mean a place of residence used as the home of an individual as defined for purposes of section 1861(n) of the Act. As outlined in section 1861(iii)(1) of the Act, to be eligible to receive home infusion therapy services under the home infusion therapy services benefit, the patient must be under the care of an applicable provider (defined in section 1861(iii)(3)(A) of the Act as a physician, nurse practitioner, or physician's assistant), and the patient must be under a physician-established plan of care that prescribes the type, amount, and duration of infusion therapy services that are to be furnished. The plan of care must be periodically reviewed by the physician in coordination with the furnishing of home infusion drugs (as defined in section 1861(iii)(3)(C) of the Act). Section 1861(iii)(3)(C) of the Act defines a ''home infusion drug'' under the home infusion therapy services benefit as a drug or biological administered intravenously, or subcutaneously for an administration period of 15 minutes or more, in the patient's home, through a pump that is an item of DME as defined under section 1861(n) of the Act. This definition does not include insulin pump systems or any self-administered

[7] Medicare Benefit Policy Manual, Chapter 15, ''Covered Medical and Other Health Services'', section 50.2—Determining Self-Administration of Drug or Biological. *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf.*

[8] Self-Administered Drug (SAD) Exclusion List Report. *www.cms.gov/medicare-coverage-database/reports/sad-exclusion-list-report.aspx?bc=AQAAAAAAAAAAAA%3D%3D.*

[9] National Coverage Determinations Manual. *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/internet-Only-Manuals-IOMs-Items/CMS014961.html.*

drug or biological on a self-administered drug exclusion list.

Section 1861(iii)(3)(D)(i) of the Act defines a ''qualified home infusion therapy supplier'' as a pharmacy, physician, or other provider of services or supplier licensed by the state in which supplies or services are furnished. The provision specifies that qualified home infusion therapy suppliers must furnish infusion therapy to individuals with acute or chronic conditions requiring administration of home infusion drugs; ensure the safe and effective provision and administration of home infusion therapy on a 7-day-a-week, 24-hour-a-day basis; be accredited by an organization designated by the Secretary; and meet other such requirements as the Secretary deems appropriate, taking into account the standards of care for home infusion therapy established by Medicare Advantage (MA) plans under Part C and in the private sector. The supplier may subcontract with a pharmacy, physician, other qualified supplier or provider of medical services, in order to meet these requirements.

Section 1834(u)(1) of the Act requires the Secretary to implement a payment system under which, beginning January 1, 2021, a single payment is made to a qualified home infusion therapy supplier for the items and services (professional services, including nursing services; training and education; remote monitoring, and other monitoring services). The single payment must take into account, as appropriate, types of infusion therapy, including variations in utilization of services by therapy type. In addition, the single payment amount is required to be adjusted to reflect geographic wage index and other costs that may vary by region, patient acuity, and complexity of drug administration. The single payment may be adjusted to reflect outlier situations, and other factors as deemed appropriate by the Secretary, which are required to be done in a budget-neutral manner. Section 1834(u)(2) of the Act specifies certain items that ''the Secretary may consider'' in developing the home infusion therapy payment system: ''the costs of furnishing infusion therapy in the home, consult[ation] with home infusion therapy suppliers, . . . payment amounts for similar items and services under this part and Part A, and . . . payment amounts established by Medicare Advantage plans under Part C and in the private insurance market for home infusion therapy (including average per treatment day payment amounts by type of home infusion therapy)''. Section 1834(u)(3) of the Act specifies that annual updates to the single payment are required to be made, beginning January 1, 2022, by increasing the single payment amount by the percent increase in the Consumer Price Index for all urban consumers (CPI–U) for the 12-month period ending with June of the preceding year, reduced by the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP). Under section 1834(u)(1)(A)(iii) of the Act, the single payment amount for each infusion drug administration calendar day, including the required adjustments and the annual update, cannot exceed the amount determined under the fee schedule under section 1848 of the Act for infusion therapy services if furnished in a physician's office. This statutory provision limits the single payment amount so that it cannot reflect more than 5 hours of infusion for a particular therapy per calendar day. Section 1834(u)(4) of the Act also allows the Secretary discretion, as appropriate, to consider prior authorization requirements for home infusion therapy services. Finally, section 5012(c)(3) of the 21st Century Cures Act amended section 1861(m) of the Act to exclude home infusion therapy from the HH PPS beginning on January 1, 2021.

(2) Bipartisan Budget Act of 2018

Section 50401 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) amended section 1834(u) of the Act by adding a new paragraph (7) that established a home infusion therapy services temporary transitional payment for eligible home infusion suppliers for certain items and services furnished in coordination with the furnishing of transitional home infusion drugs, beginning January 1, 2019. This payment covers the same items and services as defined in section 1861(iii)(2)(A) and (B) of the Act, furnished in coordination with the furnishing of transitional home infusion drugs. Section 1834(u)(7)(A)(iii) of the Act defines the term ''transitional home infusion drug'' using the same definition as ''home infusion drug'' under section 1861(iii)(3)(C) of the Act, which is a parenteral drug or biological administered intravenously, or subcutaneously for an administration period of 15 minutes or more, in the home of an individual through a pump that is an item of DME as defined under section 1861(n) of the Act. The definition of ''home infusion drug'' excludes ''a self-administered drug or biological on a self-administered drug exclusion list'' but the definition of ''transitional home infusion drug'' notes that this exclusion shall not apply if a drug described in such clause is identified in clauses (i), (ii), (iii) or (iv) of 1834(u)(7)(C) of the Act. Section 1834(u)(7)(C) of the Act sets out the Healthcare Common Procedure Coding System (HCPCS) codes for the drugs and biologicals covered under the DME LCD for External Infusion Pumps (L33794),[10] as the drugs covered during the temporary transitional period. In addition, section 1834(u)(7)(C) of the Act states that the Secretary shall assign to an appropriate payment category drugs which are covered under the DME LCD for External Infusion Pumps and billed under HCPCS codes J7799 (Not otherwise classified drugs, other than inhalation drugs, administered through DME) and J7999 (Compounded drug, not otherwise classified), or billed under any code that is implemented after the date of the enactment of this paragraph and included in such local coverage determination or included in subregulatory guidance as a home infusion drug.

Section 1834(u)(7)(E)(i) of the Act states that payment to an eligible home infusion supplier or qualified home infusion therapy supplier for an infusion drug administration calendar day in the individual's home refers to payment only for the date on which professional services, as described in section 1861(iii)(2)(A) of the Act, were furnished to administer such drugs to such individual. This includes all such drugs administered to such individual on such day. Section 1842(u)(7)(F) of the Act defines ''eligible home infusion supplier'' as a supplier who is enrolled in Medicare as a pharmacy that provides external infusion pumps and external infusion pump supplies, and that maintains all pharmacy licensure requirements in the State in which the applicable infusion drugs are administered.

As set out at section 1834(u)(7)(C) of the Act, identified HCPCS codes for transitional home infusion drugs are assigned to three payment categories, as identified by their corresponding HCPCS codes, for which a single amount will be paid for home infusion therapy services furnished on each infusion drug administration calendar day. Payment category 1 includes certain intravenous infusion drugs for therapy, prophylaxis, or diagnosis, including antifungals and antivirals; inotropic and pulmonary hypertension drugs; pain management drugs; and chelation drugs. Payment category 2

[10] Local Coverage Determination (LCD): External Infusion Pumps (L33794). *https://med.noridianmedicare.com/documents/2230703/7218263/External+Infusion+Pumps+LCD+and+PA.*

includes subcutaneous infusions for therapy or prophylaxis, including certain subcutaneous immunotherapy infusions. Payment category 3 includes intravenous chemotherapy infusions, including certain chemotherapy drugs and biologicals. The payment category for subsequent transitional home infusion drug additions to the LCD and compounded infusion drugs not otherwise classified, as identified by HCPCS codes J7799 and J7999, will be determined by the DME MACs.

In accordance with section 1834(u)(7)(D) of the Act, each payment category is paid at amounts in accordance with the Physician Fee Schedule (PFS) for each infusion drug administration calendar day in the individual's home for drugs assigned to such category, without geographic adjustment. Section 1834(u)(7)(E)(ii) of the Act requires that in the case that two (or more) home infusion drugs or biologicals from two different payment categories are administered to an individual concurrently on a single infusion drug administration calendar day, one payment for the highest payment category will be made.

d. Summary of CY 2019 and CY 2020 Home Infusion Therapy Provisions

In the CY 2019 Home Health Prospective Payment System (HH PPS) final rule with comment period (83 FR 56579) we finalized the implementation of the home infusion therapy services temporary transitional payments under paragraph (7) of section 1834(u) of the Act, for CYs 2019 and 2020. These services are furnished in the individual's home to an individual who is under the care of an applicable provider (defined in section 1861(iii)(3)(A) of the Act as a physician, nurse practitioner, or physician's assistant) and where there is a plan of care established and periodically reviewed by a physician (defined at section 1861(r)(1) of the Act), prescribing the type, amount, and duration of infusion therapy services. Only eligible home infusion suppliers can bill for the temporary transitional payments. Therefore, in accordance with section 1834(u)(7)(F) of the Act, we clarified that this means that existing DME suppliers that are enrolled in Medicare as pharmacies that provide external infusion pumps and external infusion pump supplies, who comply with Medicare's DME Supplier and Quality Standards, and maintain all pharmacy licensure requirements in the State in which the applicable infusion drugs are administered, are considered eligible home infusion suppliers.

Section 1834(u)(7)(C) of the Act assigns transitional home infusion drugs, identified by the HCPCS codes for the drugs and biologicals covered under the DME LCD for External Infusion Pumps (L33794),[11] into three payment categories, for which we established a single payment amount in accordance with section 1834(u)(7)(D) of the Act. This section states that each single payment amount per category will be paid at amounts equal to the amounts determined under the PFS established under section 1848 of the Act for services furnished during the year for codes and units of such codes, without geographic adjustment. Therefore, we created a new HCPCS G-code for each of the three payment categories and finalized the billing procedure for the temporary transitional payment for eligible home infusion suppliers. We stated that the eligible home infusion supplier would submit, in line-item detail on the claim, a G-code for each infusion drug administration calendar day. We stated that the claim should include the length of time, in 15-minute increments, for which professional services were furnished. The G-codes can be billed separately from, or on the same claim as, the DME, supplies, or infusion drug, and are processed through the DME MACs. On August 10, 2018, we issued Change Request: R4112CP: Temporary Transitional Payment for Home Infusion Therapy Services for CYs 2019 and 2020[12] outlining the requirements for the claims processing changes needed to implement this payment.

And last, we finalized the definition of ''infusion drug administration calendar day'' in regulation as the day on which home infusion therapy services are furnished by skilled professional(s) in the individual's home on the day of infusion drug administration. The skilled services provided on such day must be so inherently complex that they can only be safely and effectively performed by, or under the supervision of, professional or technical personnel (42 CFR 486.505). Section 1834(u)(7)(E)(i) of the Act clarifies that this definition is with respect to the furnishing of ''transitional home infusion drugs'' and ''home infusion drugs'' to an individual by an ''eligible home infusion supplier'' and a ''qualified home infusion therapy supplier.'' The definition of ''infusion drug administration calendar day'' applies to both the temporary transitional payment in CYs 2019 and 2020 and the permanent home infusion therapy services benefit to be implemented beginning in CY 2021.

2. Summary of Home Infusion Therapy Services for CY 2021 and Subsequent Years

Upon completion of the temporary transitional payments for home infusion therapy services at the end of CY 2020, we will be implementing the permanent payment system for home infusion therapy services under Section 5012 of the 21st Century Cures Act (Pub. L. 114–255) beginning January 1, 2021. In the CY 2020 HH PPS final rule with comment period, we finalized provisions regarding payment for home infusion therapy services for CY 2021 and subsequent years in order to allow adequate time for eligible home infusion therapy suppliers to make any necessary software and business process changes for implementation on January 1, 2021.

a. Scope of Benefit and Conditions for Payment

Section 1861(iii) of the Act establishes certain provisions related to home infusion therapy with respect to the requirements that must be met for Medicare payment to be made to qualified home infusion therapy suppliers. These provisions serve as the basis for determining the scope of the home infusion drugs eligible for coverage of home infusion therapy services, outlining beneficiary qualifications and plan of care requirements, and establishing who can bill for payment under the benefit.

(1) Home Infusion Drugs

In the CYs 2019 and 2020 Home Health Prospective Payment System (HH PPS) proposed rules (83 FR 32466 and 84 FR 34690) we discussed the relationship between the home infusion therapy services benefit and the DME benefit. We stated that, as there is no separate Medicare Part B DME payment for the professional services associated with the administration of certain home infusion drugs covered as supplies necessary for the effective use of external infusion pumps, we consider the home infusion therapy services benefit to be a separate payment in addition to the existing payment for the DME equipment, accessories, and supplies (including the home infusion drug) made under the DME benefit. We stated that, consistent with the

[11] Local Coverage Determination (LCD): External Infusion Pumps (L33794). *https://www.cms.gov/medicare-coverage-database/details/lcd-details.aspx?LCDId=33794&ver=83&Date=05%2f15%2f2019&DocID=L33794&bc=iAAAABAAAAAA&.*

[12] Temporary Transitional Payment for Home Infusion Therapy Services for CYs 2019 and 2020. August 10, 2018. *https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/2018Downloads/R4112CP.pdf.*

definition of ''home infusion therapy,'' the home infusion therapy services payment explicitly and separately pays for the professional services related to the administration of the drugs identified on the DME LCD for External Infusion Pumps (L33794),[13] when such services are furnished in the individual's home. For purposes of the temporary transitional payments for home infusion therapy services in CYs 2019 and 2020, the term ''transitional home infusion drug'' includes the HCPCS codes for the drugs and biologicals covered under the DME LCD for External Infusion Pumps (L33794).[14] We also noted that although section 1834(u)(7)(A)(iii) of the Act defines the term ''transitional home infusion drug,'' section 1834(u)(7)(A)(iii) of the Act does not specify the HCPCS codes for ''home infusion drugs'' for which home infusion therapy services would be covered beginning in CY 2021.

Section 1861(iii)(3)(C) of the Act defines ''home infusion drug'' as a parenteral drug or biological administered intravenously, or subcutaneously for an administration period of 15 minutes or more, in the home of an individual through a pump that is an item of durable medical equipment (as defined in section 1861(n) of the Act). Such term does not include insulin pump systems or self-administered drugs or biologicals on a self-administered drug exclusion list. This definition not only specifies that the drug or biological must be administered through a pump that is an item of DME, but references the statutory definition of DME at 1861(n) of the Act. This means that ''home infusion drugs'' are drugs and biologicals administered through a pump that is covered under the Medicare Part B DME benefit. Therefore, in the CY 2020 HH PPS final rule with comment period (84 FR 60618), we stated that this means that ''home infusion drugs'' are defined as parenteral drugs and biologicals administered intravenously, or subcutaneously for an administration period of 15 minutes or more, in the home of an individual through a pump that is an item of DME covered under the Medicare Part B DME benefit, pursuant to the statutory definition set out at section 1861(iii)(3)(C) of the Act, and incorporated by cross reference at section 1834(u)(7)(A)(iii) of the Act.

(2) Patient Eligibility and Plan of Care Requirements

Subparagraphs (A) and (B) of section 1861(iii)(1) of the Act set forth beneficiary eligibility and plan of care requirements for ''home infusion therapy.'' In accordance with section 1861(iii)(1)(A) of the Act, the beneficiary must be under the care of an applicable provider, defined in section 1861(iii)(3)(A) of the Act as a physician, nurse practitioner, or physician assistant. In accordance with section 1861(iii)(1)(B) of the Act, the beneficiary must also be under a plan of care, established by a physician (defined at section 1861(r)(1) of the Act), prescribing the type, amount, and duration of infusion therapy services that are to be furnished, and periodically reviewed, in coordination with the furnishing of home infusion drugs under Part B. Based on these statutory requirements, and in accordance with the standards at § 486.520, we finalized the home infusion therapy services conditions for payment at 42 CFR part 414, subpart P via the CY 2020 HH PPS final rule with comment period (84 FR 34690).

(3) Qualified Home Infusion Therapy Suppliers and Professional Services

Section 1861(iii)(3)(D)(i) of the Act defines a ''qualified home infusion therapy supplier'' as a pharmacy, physician, or other provider of services or supplier licensed by the State in which the pharmacy, physician, or provider of services or supplier furnishes items or services. The qualified home infusion therapy supplier must: Furnish infusion therapy to individuals with acute or chronic conditions requiring administration of home infusion drugs; ensure the safe and effective provision and administration of home infusion therapy on a 7-day-a-week, 24-hour a-day basis; be accredited by an organization designated by the Secretary; and meet such other requirements as the Secretary determines appropriate.

Section 1861(iii)(2) of the Act defines home infusion therapy to include the following items and services: The professional services, including nursing services, furnished in accordance with the plan, training and education (not otherwise paid for as DME), remote monitoring, and other monitoring services for the provision of home infusion therapy and home infusion drugs furnished by a qualified home infusion therapy supplier, which are furnished in the individual's home. Section 1861(iii)(2) of the Act does not define home infusion therapy services to include the pump, home infusion drug, or related services. Therefore, in the CY 2020 HH PPS final rule with comment period, we noted that the infusion pump, drug, and other supplies, and the services required to furnish these items (that is, the compounding and dispensing of the drug) remain covered under the DME benefit.

We stated in the CY 2020 HH PPS proposed rule that we did not specifically enumerate a list of ''professional services'' for which the qualified home infusion therapy supplier is responsible in order to avoid limiting services or the involvement of providers of services or suppliers that may be necessary in the care of an individual patient (84 FR 34692). However, we noted that, under section 1862(a)(1)(A) of the Act, no payment can be made for Medicare services under Part B that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, unless explicitly authorized by statutes. We stated that this means that the qualified home infusion therapy supplier is responsible for the reasonable and necessary services related to the administration of the home infusion drug in the individual's home. These services may require some degree of care coordination or monitoring outside of an infusion drug administration calendar day. However, payment for these services is built into the bundled payment for an infusion drug administration calendar day.

Payment to a qualified home infusion therapy supplier is for an infusion drug administration calendar day in the individual's home, which, in accordance with section 1834(u)(7)(E) of the Act, refers to payment only for the date on which professional services were furnished to administer such drugs to such individual. Ultimately, the qualified home infusion therapy supplier is the entity responsible for furnishing the necessary services to administer the drug in the home and, as we noted in the CY 2019 HH PPS final rule with comment period (83 FR 56581), ''administration'' refers to the process by which the drug enters the patient's body. Therefore, it is necessary for the qualified home infusion therapy supplier to be in the patient's home, on occasions when the drug is being administered in order to provide an accurate assessment to the physician responsible for ordering the home infusion drug and services. The services provided would include patient

[13] Local Coverage Determination (LCD): External Infusion Pumps (L33794). *https://med.noridianmedicare.com/documents/2230703/7218263/External+Infusion+Pumps+LCD+and+PA.*

[14] Local Coverage Determination (LCD): External Infusion Pumps (L33794). *https://med.noridianmedicare.com/documents/2230703/7218263/External+Infusion+Pumps+LCD+and+PA.*

evaluation and assessment; training and education of patients and their caretakers, assessment of vascular access sites and obtaining any necessary bloodwork; and evaluation of medication administration. However, visits made solely for the purposes of venipuncture on days where there is no administration of the infusion drug would not be separately paid because the single payment includes all services for administration of the drug. Payment for an infusion drug administration calendar day is a bundled payment, which reflects not only the visit itself, but any necessary follow-up work (which could include visits for venipuncture), or care coordination provided by the qualified home infusion therapy supplier. Any care coordination, or visits made for venipuncture, provided by the qualified home infusion therapy supplier that occurs outside of an infusion drug administration calendar day would be included in the payment for the visit (83 FR 56581).

Additionally, section 1861(iii)(1)(B) of the Act requires that the patient be under a plan of care established and periodically reviewed by a physician, in coordination with the furnishing of home infusion drugs. The physician is responsible for ordering the reasonable and necessary services for the safe and effective administration of the home infusion drug, as indicated in the patient plan of care. In accordance with this section, the physician is responsible for coordinating the patient's care in consultation with the DME supplier furnishing the infusion pump and the home infusion drug. We recognize that collaboration between the ordering physician and the DME supplier furnishing the home infusion drug is imperative in providing safe and effective home infusion. Payment for physician services, including any home infusion care coordination services, are separately paid to the physician under the PFS and are not covered under the home infusion therapy services benefit. However, payment under the home infusion therapy services benefit to eligible home infusion therapy suppliers is for the professional services that inform collaboration between physicians and home infusion therapy suppliers. Care coordination between the physician and DME supplier, although likely to include review of the services indicated in the home infusion therapy supplier plan of care, is paid separately from the payment under the home infusion therapy services benefit.

As discussed in the CY 2020 HH PPS proposed rule, the DME quality standards require the supplier to review the patient's record and consult with the prescribing physician as needed to confirm the order and to recommend any necessary changes, refinements, or additional evaluations to the prescribed equipment, item(s), and/or service(s) (84 FR 34692). Follow-up services to the beneficiary and/or caregiver(s), must be consistent with the type(s) of equipment, item(s) and service(s) provided, and include recommendations from the prescribing physician or healthcare team member(s).[15] Additionally, DME suppliers are required to communicate directly with patients regarding their medications.

In summary, the qualified home infusion therapy supplier is responsible for the reasonable and necessary services related to the administration of the home infusion drug in the individual's home. These services may require some degree of care coordination or monitoring outside of an infusion drug administration calendar day; payment for these services is built into the bundled payment for an infusion drug administration calendar day. Furthermore, as we noted in the CY 2019 HH PPS proposed rule, we consider the home infusion benefit principally to be a separate payment in addition to the existing payment made under the DME benefit, thus explicitly and separately paying for the home infusion therapy services (83 FR 32466). Therefore, the professional services covered under the DME benefit are not covered under the home infusion benefit. While the two benefits exist in tandem, the services are unique to each benefit and billed and paid for under separate payment systems.

(4) Home Infusion Therapy and Interaction With the Home Health Benefit

Because a qualified home infusion therapy supplier is not required to become accredited as a Part B DME supplier or to furnish the home infusion drug, and because payment is determined by the provision of services furnished in the patient's home, we acknowledged in the CY 2019 HH PPS proposed rule the potential for overlap between the new home infusion therapy services benefit and the home health benefit (83 FR 32469). We stated that a beneficiary is not required to be considered homebound in order to be eligible for the home infusion therapy services benefit; however, there may be instances where a beneficiary under a home health plan of care also requires home infusion therapy services. Additionally, because section 5012 of the 21st Century Cures Act amends section 1861(m) of the Act to exclude home infusion therapy from home health services effective on January 1, 2021, we stated that a beneficiary may utilize both benefits concurrently.

Furthermore, because both the home health agency and the qualified home infusion therapy supplier furnish services in the individual's home, and may potentially be the same entity, the best process for payment for furnishing home infusion therapy services to beneficiaries who qualify for both benefits is as outlined in the CY 2019 HH PPS proposed rule (83 FR 32469). If a patient receiving home infusion therapy is also under a home health plan of care, and receives a visit that is unrelated to home infusion therapy, then payment for the home health visit would be covered by the HH PPS and billed on the home health claim. When the home health agency furnishing home health services is also the qualified home infusion therapy supplier furnishing home infusion therapy services, and a home visit is exclusively for the purpose of furnishing items and services related to the administration of the home infusion drug, the home health agency would submit a home infusion therapy services claim under the home infusion therapy services benefit. If the home visit includes the provision of other home health services in addition to, and separate from, home infusion therapy services, the home health agency would submit both a home health claim under the HH PPS and a home infusion therapy services claim under the home infusion therapy services benefit. However, the agency must separate the time spent furnishing services covered under the HH PPS from the time spent furnishing services covered under the home infusion therapy services benefit. DME is excluded from the consolidated billing requirements governing the HH PPS (42 CFR 484.205) and therefore, the DME items and services (including the home infusion drug and related services) will continue to be paid for outside of the HH PPS. If the qualified home infusion therapy supplier is not the same entity as the home health agency furnishing the home health services, the home health agency would continue to bill under the HH PPS on the home health claim, and the qualified home infusion therapy supplier would

[15] Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Quality Standards. *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Downloads/Final-DMEPOS-Quality-Standards-Eff-01-09-2018.pdf.*

bill for the services related to the administration of the home infusion drugs on the home infusion therapy services claim.

b. Notification of Infusion Therapy Options Available Prior To Furnishing Home Infusion Therapy Services

Section 1834(u)(6) of the Act requires that prior to the furnishing of home infusion therapy services to an individual, the physician who establishes the plan described in section 1861(iii)(1) of the Act for the individual shall provide notification (in a form, manner, and frequency determined appropriate by the Secretary) of the options available (such as home, physician's office, hospital outpatient department) for the furnishing of infusion therapy under this part.

We recognize there are several possible forms, manners, and frequencies that physicians may use to notify patients of their infusion therapy options. We solicited comments in the CY 2020 PFS proposed rule (84 FR 40716) and the CY 2020 HH PPS proposed rule (84 FR 34694), regarding the appropriate form, manner, and frequency that any physician must use to provide notification of the treatment options available to his/her patient for the furnishing of infusion therapy (home or otherwise) under Medicare Part B. We also invited comments on any additional interpretations of this notification requirement. We summarized the comments received in the CY 2020 PFS final rule (84 FR 62568) and the CY 2020 HH PPS final rule with comment period (84 FR 60478), and we stated we would take these comments into consideration as we continue developing future policy through notice-and-comment rulemaking.

Many commenters stated that physicians already routinely discuss the infusion therapy options with their patients and annotate these discussions in their patients' medical records. For home infusion therapy services effective beginning CY 2021, physicians are to continue with the current practice of discussing options available for furnishing infusion therapy under Part B and annotating these discussions in their patients' medical records prior to establishing a home infusion therapy plan of care. We are not proposing to create a mandatory form nor are we otherwise proposing to require a specific manner or frequency of notification of options available for infusion therapy under Part B prior to establishing a home infusion therapy plan of care, as we believe that current practice provides appropriate notification. However, if current practice is later found to be insufficient in providing appropriate notification to patients of the available infusion options under Part B, we may consider additional requirements regarding this notification in future rulemaking.

3. Payment Categories and Payment Amounts for Home Infusion Therapy Services for CY 2021

Section 1834(u)(1) of the Act provides the authority for the development of a payment system for Medicare-covered home infusion therapy services. In accordance with section 1834(u)(1)(A)(i) of the Act, the Secretary is required to implement a payment system under which a single payment is made to a qualified home infusion therapy supplier for items and services furnished by a qualified home infusion therapy supplier in coordination with the furnishing of home infusion drugs. Section 1834(u)(1)(A)(ii) of the Act states that a unit of single payment under this payment system is for each infusion drug administration calendar day in the individual's home, and requires the Secretary, as appropriate, to establish single payment amounts for different types of infusion therapy, taking into account variation in utilization of nursing services by therapy type. Section 1834(u)(1)(A)(iii) of the Act provides a limitation to the single payment amount, requiring that it shall not exceed the amount determined under the PFS (under section 1848 of the Act) for infusion therapy services furnished in a calendar day if furnished in a physician office setting. Furthermore, such single payment shall not reflect more than 5 hours of infusion for a particular therapy in a calendar day. This permanent payment system would become effective for home infusion therapy items and services furnished on or after January 1, 2021.

In accordance with section 1834(u)(1)(A)(ii) of the Act, a unit of single payment for each infusion drug administration calendar day in the individual's home must be established for types of infusion therapy, taking into account variation in utilization of nursing services by therapy type. Furthermore, section 1834(u)(1)(B)(ii) of the Act requires that the payment amount reflect factors such as patient acuity and complexity of drug administration. We believe that the best way to establish a single payment amount that varies by utilization of nursing services and reflects patient acuity and complexity of drug administration, is to group home infusion drugs by J-code into payment categories reflecting similar therapy types. Therefore, each payment category would reflect variations in infusion drug administration services.

Section 1834(u)(7)(C) of the Act established three payment categories, with the associated J-code for each transitional home infusion drug (see Table 12), for the home infusion therapy services temporary transitional payment. Payment category 1 comprises certain intravenous infusion drugs for therapy, prophylaxis, or diagnosis, including, but not limited to, antifungals and antivirals; inotropic and pulmonary hypertension drugs; pain management drugs; and chelation drugs. Payment category 2 comprises subcutaneous infusions for therapy or prophylaxis, including, but not limited to, certain subcutaneous immunotherapy infusions. Payment category 3 comprises intravenous chemotherapy infusions, including certain chemotherapy drugs and biologicals.

a. CY 2021 Payment Categories for Home Infusion Therapy Services

In the CY 2020 HH PPS final rule with comment period (84 FR 60478), we finalized our proposal to maintain the three payment categories utilized under the temporary transitional payments for home infusion therapy services. Maintaining the three current payment categories, with the associated J-codes as outlined in section 1834(u)(7)(C) of the Act, utilizes an already established framework for assigning a unit of single payment (per category), accounting for different therapy types, as required by section 1834(u)(1)(A)(ii) of the Act. The payment amount for each of these three categories is different, though each category has its associated single payment amount. The single payment amount (per category) would thereby reflect variations in nursing utilization, complexity of drug administration, and patient acuity, as determined by the different categories based on therapy type. Retaining the three current payment categories maintains consistency with the already established payment methodology and ensures a smooth transition between the temporary transitional payments and the permanent payment system to be implemented beginning with 2021. Table 12 provides the list of J-codes associated with the infusion drugs that fall within each of the payment categories. There are some drugs that are paid for under the transitional benefit but would not be defined as a home infusion drug under the permanent benefit beginning with 2021. As noted previously in this proposed rule, section 1861(iii)(3)(C) of the Act defines a home infusion drug as a parenteral drug or biological administered intravenously or subcutaneously for an administration period of 15 minutes or more, in the home of an individual through a pump that is an item of DME. Such term does not include the following: (1) Insulin pump systems; and (2) a self-administered drug or biological on a self-administered drug exclusion list. Hizentra, a subcutaneous immunoglobulin, is not included in this definition of home infusion drugs because it is listed on a self-administered drug (SAD) exclusion list by the MACs. This drug was included as a transitional home infusion drug since the definition of such drug in section 1834(u)(7)(A)(iii) of the Act does not exclude self-administered drugs or biologicals on a SAD exclusion list under the temporary transitional payment. Therefore, although home infusion therapy services related to the administration of Hizentra are covered under the temporary transitional payment, because it is on a SAD exclusion list, services related to the administration of this biological are not covered under the benefit in 2021. Similarly, in accordance with the definition of ''home infusion drug'' as a parenteral drug or biological administered intravenously or subcutaneously, home infusion therapy services related to the administration of Ziconotide and Floxuridine are also excluded, as these drugs are given via intrathecal and intra-arterial routes respectively and therefore do not meet the definition of home infusion drug. Likewise, home infusion therapy services related to the intrathecal administration of Morphine, identified by HCPCS code J2274, is excluded because intrathecal administration does not meet the definition of a home infusion drug under the permanent benefit. Subsequent drugs added to the DME LCD for external infusion pumps, and compounded infusion drugs not otherwise classified, as identified by HCPCS codes J7799 and J7999, would be grouped into the appropriate payment category by the DME MACs. Payment category 1 would include any subsequent intravenous infusion drug additions, payment category 2 would include any subsequent subcutaneous infusion drug additions, and payment category 3 would include any subsequent intravenous chemotherapy or other highly complex drug or biologic infusion additions.

TABLE 12: INFUSION DRUG J-CODES ASSOCIATED WITH HOME INFUSION THERAPY SERVICE PAYMENT CATEGORIES FOR CY 2021

J-Code	Drug
Category 1	
J0133	Injection, acyclovir, 5 mg
J0285	Injection, amphotericin b, 50 mg
J0287	Injection, amphotericin b lipid complex, 10 mg
J0288	Injection, amphotericin b cholesteryl sulfate complex, 10 mg
J0289	Injection, amphotericin b liposome, 10 mg
J0895	Injection, deferoxamine mesylate, 500 mg
J1170	Injection, hydromorphone, up to 4 mg
J1250	Injection, dobutamine hydrochloride, per 250 mg
J1265	Injection, dopamine hcl, 40 mg
J1325	Injection, epoprostenol, 0.5 mg
J1455	Injection, foscarnet sodium, per 1000 mg
J1457	Injection, gallium nitrate, 1 mg
J1570	Injection, ganciclovir sodium, 500 mg
J2175	Injection, meperidine hydrochloride, per 100 mg
J2260	Injection, milrinone lactate, 5 mg
J2270	Injection, morphine sulfate, up to 10 mg
J3010	Injection, fentanyl citrate, 0.1 mg
J3285	Injection, treprostinil, 1 mg
Category 2	
J1555 JB*	Injection, immune globulin (cuvitru), 100 mg
J1561 JB*	Injection, immune globulin, (gamunex-c/gammaked), non-lyophilized (e.g., liquid), 500 mg
J1562 JB*	Injection, immune globulin (vivaglobin), 100 mg
J1569 JB*	Injection, immune globulin, (gammagard liquid), non-lyophilized, (e.g., liquid), 500 mg
J1575 JB*	Injection, immune globulin/hyaluronidase, (hyqvia), 100 mg immune globulin
Category 3	
J9000	Injection, doxorubicin hydrochloride, 10 mg
J9039	Injection, blinatumomab, 1 microgram
J9040	Injection, bleomycin sulfate, 15 units
J9065	Injection, cladribine, per 1 mg
J9100	Injection, cytarabine, 100 mg
J9190	Injection, fluorouracil, 500 mg
J9360	Injection, vinblastine sulfate, 1 mg
J9370	Injection, vincristine sulfate, 1 mg

*The JB modifier indicates that the route of administration is subcutaneous.

b. CY 2021 Payment Amounts for Home Infusion Therapy Services

Section 1834(u)(1)(A)(ii) of the Act requires that the payment amount take into account variation in utilization of nursing services by therapy type. Additionally, section 1834(u)(1)(A)(iii) of the Act provides a limitation that the single payment shall not exceed the amount determined under the fee schedule under section 1848 of the Act for infusion therapy services furnished in a calendar day if furnished in a physician office setting, except such single payment shall not reflect more than 5 hours of infusion for a particular therapy in a calendar day. Finally, section 1834(u)(1)(B)(ii) of the Act requires the payment amount to reflect patient acuity and complexity of drug administration.

Currently, as set out at section 1834(u)(7)(D) of the Act, each temporary transitional payment category is paid at amounts in accordance with six infusion CPT codes and units of such codes under the PFS. These payment category amounts are set equal to 4 hours of infusion therapy administration services in a physician's office for each infusion drug administration calendar day, regardless of the length of the visit. In the CY 2020 HH PPS final rule with comment period (84 FR 60478), we finalized that the payment amounts per category, for an infusion drug administration calendar day under the permanent benefit, be in accordance with the six PFS infusion CPT codes and units for such codes, as described in section 1834(u)(7)(D) of the

Act. However, we set the amount equivalent to 5 hours of infusion in a physician's office, rather than 4 hours. Each payment category amount would be in accordance with the six infusion CPT codes identified in section 1834(u)(7)(D) of the Act and as shown in Table 13.

TABLE 13: PAYMENT CATEGORIES FOR HOME INFUSION THERAPY SERVICES PAYMENT FOR CY 2021

CPT CODE	DESCRIPTION	UNITS
	CATEGORY 1	
96365	Therapeutic, Prophylactic, and Diagnostic Injections and Infusions (Excludes Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration)- up to one hour	1
96366	Therapeutic, Prophylactic, and Diagnostic Injections and Infusions (Excludes Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration)- each additional hour	4
	CATEGORY 2	
96369	Therapeutic, Prophylactic, and Diagnostic Injections and Infusions (Excludes Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration)- up to one hour	1
96370	Therapeutic, Prophylactic, and Diagnostic Injections and Infusions (Excludes Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration)- each additional hour	4
	CATEGORY 3	
96413	Injection and Intravenous Infusion Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration- up to one hour	1
96415	Injection and Intravenous Infusion Chemotherapy and Other Highly Complex Drug or Highly Complex Biologic Agent Administration- each additional hour	4

We also finalized the proposal to increase the payment amounts for each of the three payment categories for the first home infusion therapy visit by the qualified home infusion therapy supplier in the patient's home by the average difference between the PFS amounts for E/M existing patient visits and new patient visits for a given year, resulting in a small decrease to the payment amounts for the second and subsequent visits, using a budget neutrality factor. Table 14 shows the E/M visit codes and PFS payment amounts for CY 2020, for both new and existing patients, used to determine the increased payment amount for the first visit. Using the CY 2020 PFS rates, this results in a 60 percent increase in the first visit payment amount and a 3.72 percent decrease in subsequent visit amounts.

TABLE 14: AVERAGE DIFFERENCE BETWEEN PFS E/M CODES FOR NEW AND EXISTING PATIENTS*

New Patient E/M Code	PFS Amount	Existing Patient E/M Code	PFS Amount	Percent Difference
99201	$46.56	99211	$23.46	98%
99202	$77.23	99212	$46.19	67%
99203	$109.35	99213	$76.15	44%
99204	$167.09	99214	$110.43	51%
99205	$211.12	99215	$148.33	42%
Total	$611.35		$404.56	51%

Note: Rates are calculated using CY 2020 PFS rates.

*This represents the average difference between the physician E/M payment amounts for new versus established patients: (the sum of the initial rates – the sum of the existing rates)/(the sum of the existing rates)=60 percent.

Table 15 shows the 5-hour payment amounts (using CY 2020 PFS rates) reflecting the increased payment for the first visit and the decreased payment for all subsequent visits. The payment amounts for this proposed rule are estimated using CY 2020 rates because the CY 2021 PFS rates are not available at the time of this rule making. The final home infusion 5-hour payment amounts will be released in a CR when the final CY 2021 PFS rates are posted. We plan on monitoring home infusion therapy service lengths of visits, both initial and subsequent, in order to evaluate whether the data substantiates this increase or whether we should re-evaluate whether, or how much, to increase the initial visit payment amount.

TABLE 15: 5-HOUR PAYMENT AMOUNTS REFLECTING PAYMENT RATES FOR FIRST AND SUBSEQUENT VISITS

Description	2020 PFS Amount	5-hour Payment - First Visit	5-hour Payment - Subsequent Visits
Ther, Proph, Diag IV/IN infusion 1 hr	$72.18	$256.35 (category 1)	$154.26 (category 1)
Ther, Proph, Diag IV/IN infusion add hr	$22.01		
Sub Q Ther Inf 1 hr	$162.04	$358.59 (category 2)	$215.78 (category 2)
Sub Q Ther Inf add hr	$15.52		
Chemo Inf 1 hr	$142.55	$424.43 (category 3)	$255.40 (category 3)
Chemo Inf add hr	$30.68		

Note: Rates are calculated using CY 2020 PFS rates

4. Payment Adjustments for CY 2021 Home Infusion Therapy Services

a. Home Infusion Therapy Geographic Wage Index Adjustment

Section 1834(u)(1)(B)(i) of the Act requires that the single payment amount be adjusted to reflect a geographic wage index and other costs that may vary by region. In the 2020 HH PPS final rule with comment period (84 FR 60478, 60629) we finalized the use of the Geographic Adjustment Factor (GAF) to adjust home infusion therapy payments based on differences in geographic wages. The GAF is a weighted composite of each PFS locality's work, practice expense (PE), and malpractice (MP) GPCIs and represents the combined impact of the three GPCI components. The GAF is calculated by multiplying the work, PE, and MP GPCIs by the corresponding national cost share weight: Work (50.886 percent), PE (44.839 percent), and MP (4.295 percent).[16] The GAF is not specific to any of the home infusion drug categories, so the GAF payment rate would equal the unadjusted rate multiplied by the GAF for each locality level, without a labor share adjustment. As such, based on locality, the GAF adjusted payment rate would be calculated using the following formula: $Rate^{GAF}_i = GAF * UnadjRate_i$.

The appropriate GAF value is applied to the home infusion therapy single payment amount based on the site of service of the beneficiary and the adjustment will happen on the PFS based on the beneficiary zip code submitted on the 837P/CMS–1500 professional and supplier claims form. We finalized that the application of the GAF will be budget neutral so there is no overall cost impact. However, this will result in some adjusted payments being higher than the average and others being lower. In order to make the application of the GAF budget neutral we will apply a budget-neutrality factor. If the rates were set for 2020 the budget neutrality factor would be 0.9957. The GAF conversion factor equals the ratio of the estimated unadjusted national spending total to the estimated GAF-adjusted national spending total. Estimates of national spending totals are derived from a function of ''beneficiary counts,'' ''weeks of care,'' and ''estimated visits of care'' by home infusion therapy drug payment category, which were compiled from CY 2019 utilization data. We define home infusion therapy beneficiaries as Medicare beneficiaries with at least one home infusion therapy drug prescription fill in CY 2019, and weeks of care for each home infusion therapy beneficiary equal the number of weeks between (and including) the first prescription fill in CY 2019 and the last prescription fill in CY2019. Weeks of care are then transformed into ''estimated visits of care,'' where we assumed 2 visits for the initial week of care, with 1 visit per week for all subsequent weeks for categories 1 and 3, and we assumed 1 visit per month, or 12 visits per year, for category 2.

The list of GAFs by locality for this proposed rule is available as a downloadable file at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Home-Infusion-Therapy/Overview.html.*

b. Consumer Price Index

Subparagraphs (A) and (B) of section 1834(u)(3) of the Act specify annual adjustments to the single payment amount that are required to be made beginning January 1, 2022. In accordance with these sections we would increase the single payment amount by the percent increase in the Consumer Price Index for all urban consumers (CPI–U) for the 12-month period ending with June of the preceding year, reduced by the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP). Accordingly, this may result in a percentage being less than 0.0 for a year, and may result in payment being less than such payment rates for the preceding year.

5. Proposed Home Infusion Therapy Services Excluded From the Medicare Home Health Benefit

Section 1861(iii) of the Act defines ''home infusion therapy'' as the items and services described in paragraph (2), furnished by a qualified home infusion therapy supplier which are furnished in the individual's home. In accordance with § 486.525, the required items and services covered under the home infusion therapy services benefit are as follows:

- Professional services, including nursing services, furnished in accordance with the plan.
- Training and education (not otherwise paid for as DME).
- Remote monitoring, and monitoring services for the provision of home infusion drugs furnished by a qualified home infusion therapy supplier.

The CY 2019 HH PPS proposed rule described the professional and nursing services, as well as the training, education, and monitoring services included in the payment to a qualified home infusion therapy supplier for the provision of home infusion drugs (83 FR

[16] $GAF = (.50886 \times \text{Work GPCI}) + (.44839 \times \text{PE GPCI}) + (.04295 \times \text{MP GPCI})$.

32467). In accordance with the definition of ''infusion drug administration calendar day'', the skilled services provided on an infusion drug administration calendar day must be so inherently complex that they can only be safely and effectively performed by, or under the supervision of, professional or technical personnel. Additionally, although we do not specify the entities that may provide the home infusion therapy services, we do state that the skilled provider must be furnishing services within the scope of his/her practice. While we do not outline an exhaustive list of services that are covered under the home infusion therapy services benefit, we outline the scope of services covered under the home infusion therapy services benefit in sub-regulatory guidance.[17] This guidance states that the home infusion therapy services benefit is intended to be a separate payment explicitly covering the professional services, training and education (not covered under the DME benefit), and monitoring and remote monitoring services for the provision of home infusion drugs. We state that these services may include, for example the following:

• Training and education on care and maintenance of vascular access devices—

++ Hygiene Education;

++ Instruction on what to do in the event of a dislodgement or occlusion;

++ Education on signs and symptoms of infection; and

++ Teaching and training on flushing and locking the catheter.

• Dressing changes and site care.

• Patient assessment and evaluation—

++ Review history and assess current physical and mental status, including obtaining vital signs;

++ Assess any adverse effects or infusion complications;

++ Evaluate family and caregiver support;

++ Review prescribed treatment and any concurrent oral and/or over-the-counter treatments; and

++ Obtain blood for laboratory work

• Medication and disease management education—

++ Instruction on self-monitoring;

++ Education on lifestyle and nutritional modifications;

++ Education regarding drug mechanism of action, side effects, interactions with other medications, adverse and infusion-related reactions;

++ Education regarding therapy goals and progress;

++ Instruction on administering pre-medications and inspection of medication prior to use;

++ Education regarding household and contact precautions and/or spills;

• Remote monitoring services.

• Monitoring services—

++ Communicate with patient regarding changes in condition and treatment plan;

++ Monitor patient response to therapy; and

++ Assess compliance.

This list is not intended to be prescriptive or all-inclusive, as the physician is responsible for ordering the reasonable and necessary services for the safe and effective administration of the home infusion drug.

Section 5012 of the 21st Century Cures Act amended section 1861(m) of the Act to exclude home infusion therapy from the definition of home health services, effective on January 1, 2021. While patients needing home infusion therapy are not required to be eligible for the home health benefit, they are not prohibited from utilizing both the home infusion therapy and home health benefits concurrently. It is also likely that many home health agencies will become accredited and enroll as qualified home infusion therapy suppliers. Therefore, because a home health agency may furnish services for a patient receiving both home health services and home infusion therapy services, it is necessary to exclude in regulation the scope of professional services, training and education, as well as monitoring and remote monitoring services, for the provision of home infusion drugs, as defined at § 486.505, from the services covered under the home health benefit. It is important to note that the home infusion therapy services distinct from those which are required and furnished under the home health benefit, are only for the provision of home infusion drugs. When a home health agency is furnishing services to a patient receiving an infusion drug not defined as a home infusion drug at § 486.505, those services may still be covered as home health services.

In accordance with the conforming amendment in section 5012(c)(3) of the 21st Century Cures Act, which amended section 1861(m) of the Act to exclude home infusion therapy from the definition of home health services, we propose to amend § 409.49 to exclude services covered under the home infusion therapy services benefit from the home health benefit. Any services that are covered under the home infusion therapy services benefit as outlined at § 486.525, including any home infusion therapy services furnished to a Medicare beneficiary that is under a home health plan of care, are excluded from coverage under the Medicare home health benefit. Additionally, excluded home infusion therapy services pertain to the items and services for the provision of home infusion drugs, as defined at § 486.505. Services for the provision of drugs and biologicals not covered under this definition may continue to be provided under the Medicare home health benefit.

As discussed in the CY 2019 HH PPS proposed rule (83 FR 32469), if a patient is under a home health plan of care, and a home health visit is furnished that is unrelated to home infusion therapy, then payment for the home health visit would be covered by the HH PPS and billed on the same home health claim. If the HHA providing services under the Medicare home health benefit is also the same entity furnishing services as the qualified home infusion therapy supplier, and a home visit is exclusively for the purpose of furnishing home infusion therapy services, the HHA would submit a claim for payment as a home infusion therapy supplier and receive payment under the home infusion therapy services benefit. If the home visit includes the provision of home health services in addition to, and separate from, items and services related to home infusion therapy, the HHA would submit both a home health claim and a home infusion therapy services claim, and must separate the time spent performing services covered under the HH PPS from the time spent performing services covered under the home infusion therapy services benefit.

B. Proposed Enrollment Standards for Qualified Home Infusion Therapy Suppliers

As previously alluded to, regulatory provisions pertaining to home infusion therapy have been established in various parts of Title 42 of the CFR. For example, part 414, subpart P outlines policies concerning home infusion therapy conditions of payment and plan of care requirements. Part 486, subpart I, outlines standards for home infusion therapy suppliers and specifies a definition of ''qualified home infusion therapy supplier'' at § 486.505. This latter term means a supplier of home infusion therapy that meets all of the following criteria, which are set forth at section 1861(iii)(3)(D)(i) of the Act:

[17] MLN Matters: SE19029: Medicare Part B Home Infusion Therapy Services With the Use of Durable Medical Equipment. December 13, 2019. *https://www.cms.gov/files/document/se19029.pdf.*

And Temporary Transitional Payment FAQs. February 27, 2019. *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Home-Infusion-Therapy/Downloads/Home-Infusion-Therapy-Services-Temp-Transitional-Payment-FAQs.pdf.*

• Furnishes infusion therapy to individuals with acute or chronic conditions requiring administration of home infusion drugs.

• Ensures the safe and effective provision and administration of home infusion therapy on a 7-day-a-week, 24-hour-a-day basis.

• Is accredited by an organization designated by the Secretary in accordance with section 1834(u)(5) of the Act.

• Meets such other requirements as the Secretary determines appropriate.

This final criterion, which reflects section 1861(iii)(3)(D)(i)(IV) of the Act, is of particular importance for purposes of this section V.B. of this proposed rule. One of our principal oversight roles is to protect the Medicare program from fraud, waste, and abuse. This is accomplished in part through the careful screening and monitoring of prospective and existing providers and suppliers. We believe that section 1861(iii)(3)(D)(i)(IV) of the Act permits the Secretary to take steps in this direction with respect to home infusion therapy suppliers.

1. Medicare Provider and Supplier Enrollment

a. Background

Section 1866(j)(1)(A) of the Act requires the Secretary to establish a process for the enrollment of providers and suppliers in the Medicare program. The overarching purpose of the enrollment process is to help ensure that providers and suppliers that seek to bill the Medicare program for services or items furnished to Medicare beneficiaries are qualified to do so under federal and state laws. The process is, to an extent, a ''gatekeeper'' that prevents unqualified and potentially fraudulent individuals and entities from being able to enter and inappropriately bill Medicare. As further explained later in this section, CMS and its Medicare Administrative Contractors (MACs; hereafter occasionally referred to as ''contractors'') carefully and closely screen and review Medicare enrollment applicants to verify that they meet all applicable legal requirements.

We have taken various steps via regulation to outline a process for enrolling providers and suppliers in the Medicare program. In the April 21, 2006 **Federal Register** (71 FR 20754), we published the ''Medicare Program; Requirements for Providers and Suppliers to Establish and Maintain Medicare Enrollment'' final rule that set forth certain requirements in 42 CFR part 424, subpart P (currently §§ 424.500 through 424.570) (hereinafter occasionally referenced as subpart P) that providers and suppliers must meet to obtain and maintain Medicare billing privileges. In the April 21, 2006 final rule, we cited sections 1102 and 1871 of the Act as general authority for our establishment of these requirements, which were designed for the efficient administration of the Medicare program.

Following the April 21, 2006 final rule, we published additional provider enrollment regulations. These were intended not only to clarify or strengthen certain components of the enrollment process but also to enable us to take further action against providers and suppliers: (1) Engaging (or potentially engaging) in fraudulent or abusive behavior; (2) presenting a risk of harm to Medicare beneficiaries or the Medicare Trust Funds; or (3) that are otherwise unqualified to furnish Medicare services or items. One such regulatory document was the February 2, 2011 final rule with comment period titled ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers'' (76 FR 5862). Implementing various provisions of the Affordable Care Act, this final rule with comment period did the following:

• Added a new § 424.514 that required submission of application fees by institutional providers (as that term is defined in § 424.502) as part of the Medicare, Medicaid, and Children's Health Insurance Program (CHIP) provider enrollment processes.

• Added a new § 424.518 that established Medicare, Medicaid, and CHIP provider enrollment screening categories and requirements based on the CMS-assessed level of risk of fraud, waste, and abuse posed by a particular category of provider or supplier.

To further address existing provider enrollment vulnerabilities, we also published the following rules:

• The December 5, 2014 final rule titled ''Medicare Program; Requirements for the Medicare Incentive Reward Program and Provider Enrollment'' (79 FR 72499).

• The September 10, 2019 final rule with comment period titled ''Medicare, Medicaid, and Children's Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process'' (84 FR 47794).

Both rules expanded the number and types of grounds on which CMS can: (1) Deny a prospective provider's or supplier's enrollment in the Medicare program under § 424.530; or (2) revoke the Medicare enrollment of an existing provider or supplier under § 424.535. In addition, the September, 10, 2019 final rule with comment period:

• Implemented section 1866(j)(5) of the Act, which permits the Secretary to deny the enrollment of a Medicare, Medicaid, and CHIP provider or supplier if the latter has or had an affiliation with a provider or supplier that—(1) has uncollected debt; (2) has been or is subject to a payment suspension under a federal health care program; (3) has been or is excluded by the Office of Inspector General (OIG) from Medicare, Medicaid, or CHIP; or (4) has had its Medicare, Medicaid, or CHIP billing privileges denied or revoked.

• Increased the maximum reenrollment bar that prohibits a provider or supplier from reenrolling in Medicare after it is revoked from 3 to 10 years, with certain exceptions.

• Prohibited a provider or supplier from enrolling in Medicare for up to 3 years if its enrollment application is denied because the provider or supplier submitted false or misleading information on or with (or omitted information from) its application in order to enroll in Medicare.

We have also conducted rulemaking that established enrollment requirements for specific, newly-recognized types of providers and suppliers, such as Medicare Diabetes Prevention Program suppliers in 2017 (82 FR 52976) and Opioid Treatment Program providers in 2019 (84 FR 62568).

b. Form CMS–855—Medicare Enrollment Application

Under § 424.510, a provider or supplier must complete, sign, and submit to its assigned MAC the appropriate Form CMS–855 (OMB Control No. 0938–0685) application in order to enroll in the Medicare program and obtain Medicare billing privileges. The Form CMS–855, which can be submitted via paper or electronically through the internet-based Provider Enrollment, Chain, and Ownership System (PECOS) process (SORN: 09–70–0532, Provider Enrollment, Chain, and Ownership System) captures information about the provider or supplier that is needed for CMS or its MACs to determine whether the provider or supplier meets all Medicare requirements. Data collected on the Form CMS–855 is carefully reviewed and verified by CMS or its MACs and includes, but is not limited to, the following:

• General identifying information (for example, legal business name, tax identification number).
• Licensure and/or certification data.
• Any final adverse actions (as that term is defined in § 424.502) of the provider or supplier, such as felony convictions, OIG exclusions, or state license suspensions or revocations.
• Practice locations and other applicable addresses of the provider or supplier.
• Information regarding the provider's or supplier's owning and managing individuals and organizations and any final adverse actions those parties may have.
• As applicable, information about the provider's or supplier's use of a billing agency.

The Form CMS–855 application is used for a number of provider enrollment transactions, such as the following:

• Initial enrollment: The provider or supplier is enrolling in Medicare for the first time, enrolling in another MAC's jurisdiction, or seeking to enroll in Medicare after having previously been enrolled.
• Change of ownership: The provider or supplier is reporting a change in its ownership.
• Revalidation: The provider or supplier is revalidating its Medicare enrollment information in accordance with § 424.515.
• Reactivation: The provider or supplier is seeking to reactivate its Medicare billing privileges after being deactivated under § 424.540.
• Change of information: The provider or supplier is reporting a change in its existing enrollment information in accordance with § 424.516.

After receiving a provider's or supplier's initial enrollment application, reviewing and confirming the information thereon, and determining whether the provider or supplier meets all applicable Medicare requirements, CMS or the MAC will either: (1) Approve the application and grant billing privileges to the provider or supplier (or, depending upon the provider or supplier type involved, simply recommend approval of the application and refer it to the state agency or to the CMS regional office, as applicable); or (2) deny enrollment under § 424.530.

We believe, and it has been our longstanding experience, that the provider enrollment process is invaluable in helping to ensure that: (1) All potential providers and suppliers are carefully screened for compliance with all applicable requirements; (2) problematic providers and suppliers are kept out of Medicare; and (3) beneficiaries are protected from unqualified providers and suppliers. Given CMS' responsibility in preventing waste and abuse in the Medicare program, we believe that the safeguards that Medicare enrollment furnishes are needed with respect to home infusion therapy suppliers.

2. Proposed Home Infusion Therapy Supplier Enrollment Provisions

There are several principal legal bases for our proposed home infusion therapy enrollment requirements. First, as stated previously, section 5012 of the Cures Act, which amended sections 1834(u), 1861(s)(2), and 1861(iii) of the Act, established a new Medicare home infusion therapy benefit. Second, section 1861(iii)(3)(D)(i)(IV) of the Act permits the Secretary to establish requirements for qualified home infusion therapy suppliers that the Secretary determines appropriate. In doing so, the Secretary shall take into account the standards of care for home infusion therapy established by Medicare Advantage plans under Part C and in the private sector. (We interpret this latter proviso, however, to apply strictly to the establishment of standards of care as opposed to the creation of home infusion therapy supplier enrollment requirements.) Third, section 1866(j) of the Act provides specific authority with respect to the enrollment process for providers and suppliers. Fourth, sections 1102 and 1871 of the Act furnish general authority for the Secretary to prescribe regulations for the efficient administration of the Medicare program.

a. Definition

We propose to establish a new § 424.68 that would encapsulate the preponderance of our home infusion therapy enrollment provisions. In paragraph (a) thereof, we propose to define ''home infusion therapy supplier.'' This definition would be largely consistent with the definition of ''qualified home infusion therapy supplier'' in section 1861(iii)(3)(D)(i)(IV) of the Act and the aforementioned definition of the same term in § 486.505, though with the addition of a specific enrollment requirement. A home infusion therapy supplier under § 424.68, for purposes of § 424.68, would mean a supplier of home infusion therapy that meets all of the following requirements:

++ Furnishes infusion therapy to individuals with acute or chronic conditions requiring administration of home infusion drugs.

++ Ensures the safe and effective provision and administration of home infusion therapy on a 7-day-a-week, 24-hour-a-day basis.

++ Is accredited by an organization designated by the Secretary in accordance with section 1834(u)(5) of the Act.

++ Is enrolled in Medicare as a home infusion therapy supplier consistent with the provisions of § 424.68 and part 424, subpart P.

b. General Enrollment and Payment Requirement

In paragraph (b), we propose that for a supplier to receive Medicare payment for the provision of home infusion therapy supplier services, the supplier must: (1) Qualify as a home infusion therapy supplier (as defined in § 424.68); and (2) be in compliance with all applicable provisions of § 424.68 and part 424, subpart P. This overarching requirement would be consistent with that in § 424.505, which states that all providers and suppliers seeking to bill Medicare must enroll in Medicare and adhere to all of subpart P's enrollment requirements.

c. Specific Requirements for Enrollment

Paragraph (c) would outline specific home infusion therapy supplier enrollment requirements. Some of these mirror the general enrollment provisions in subpart P, so we are duplicating them in § 424.68 to clarify their applicability to home infusion therapy suppliers. However, the other requirements in § 424.68(c) are unique to this supplier type.

(1) Submission of Form CMS–855

In § 424.68(c)(1)(i), we propose that a home infusion therapy supplier must complete in full and submit the Form CMS–855B application (''Medicare Enrollment Application: Clinics/Group Practices and Certain Other Suppliers'') (OMB Control No.: 0938–0685), or its electronic or successor application, to its applicable Medicare contractor. The Form CMS–855B is typically completed by suppliers other than individual physicians and practitioners. We thus believe that the Form CMS–855B is the most suitable enrollment application for home infusion therapy suppliers. In addition, we propose in § 424.68(c)(1)(ii) that the home infusion therapy supplier must certify via the Form CMS–855B that it meets and will continue to meet the specific requirements and standards for enrollment described in § 424.68 and part 424, subpart P. This is to help ensure that the home infusion therapy supplier fully understands its obligation to maintain constant compliance with the requirements associated with home infusion therapy supplier enrollment.

(2) Payment of Application Fee

As mentioned previously in our discussion of the February 2, 2011 final rule with comment period, prospective and revalidating institutional providers that are submitting an enrollment application generally must pay the applicable application fee in accordance with § 424.514. (For CY 2020, the fee amount is $595.) In § 424.502, we define an institutional provider as any provider or supplier that submits a paper Medicare enrollment application using the Form CMS–855A, Form CMS–855B (not including physician and non-physician practitioner organizations, which are exempt from the fee requirement if they are enrolling as a physician or non-physician practitioner organization), Form CMS–855S, Form CMS–20134, or an associated internet-based PECOS enrollment application. Because a home infusion therapy supplier would be required to complete the Form CMS–855B to enroll in Medicare as a home infusion therapy supplier (and would not be enrolling as a physician/non-physician organization), we believe that a home infusion therapy supplier would meet the definition of an institutional provider under § 424.502. Therefore, home infusion therapy suppliers would be required to pay an application fee consistent with § 424.514, and we accordingly propose to clarify this fee payment requirement in new § 424.68(c)(2).

(3) Accreditation

In general, accreditation of applicable CMS provider and supplier types helps ensure that the provider or supplier meets certain minimum requirements for furnishing health care services. The accreditation process frequently includes, but is not limited to, an accreditation survey. Such a survey typically involves an onsite review and evaluation of the provider's or supplier's operations, structure, and procedures to determine compliance with applicable federal standards. Title 42, part 488, subpart L, outlines, among other things, standards for accreditation organizations for home infusion therapy suppliers.

We already indicated that the definition of ''qualified home infusion supplier'' in section 1861(iii)(3)(D)(i)(III) of the Act (codified in § 486.505) requires the supplier to be accredited by an organization designated by the Secretary in accordance with section 1834(u)(5) of the Act. To this end, we propose in new § 424.68(c)(3) that a home infusion therapy supplier must be currently and validly accredited as such by a CMS-recognized home infusion therapy supplier accreditation organization in order to enroll and remain enrolled in Medicare.

(4) Home Infusion Therapy Supplier Standards

Part 486, subpart I, outlines certain standards to which home infusion therapy suppliers must adhere. For instance, § 486.520 identifies required components of a home infusion therapy supplier's plan of care; one such component is that all of the home infusion therapy supplier's patients must have a plan of care established by a physician that prescribes the type, amount, and duration of the home infusion therapy services to be furnished. Section 486.525, meanwhile, lists specific services that the home infusion therapy supplier must furnish.

Additional home infusion therapy supplier provisions are contained in part 414, subpart P. For purposes of our proposed enrollment requirements, we believe the most pertinent of these are—

- Section 414.1505, which outlines several requirements that must be met for home infusion therapy services to be paid.
- Section 414.1515, which identifies plan of care requirements supplemental to those in § 486.520(b).

The aforementioned provisions in parts 486 and 414 reflect important quality standards and payment safeguards that should not, in our view, be entirely separate from our enrollment requirements. Indeed, these provisions, like our enrollment process, help ensure that the home infusion therapy supplier is qualified to furnish such services. Consequently, we propose the following:

- In new § 424.68(c)(4), we propose that in order to enroll and maintain enrollment as a home infusion therapy supplier, the latter must be compliant with § 414.1515 and all provisions of 42 CFR part 486, subpart I.
- In § 414.1505, we propose to add a new paragraph (c) stating that, along with the requirements for home infusion therapy payment listed in paragraphs § 414.1505(a) and (b), the home infusion therapy supplier must also be enrolled in Medicare consistent with the provisions of § 424.68 and part 424, subpart P.

(5) Home Infusion Therapy Suppliers: Categorical Risk Designation

We previously referenced § 424.518, which outlines screening categories and requirements based on a CMS assessment of the level of risk of fraud, waste, and abuse posed by a particular category of provider or supplier. In general, the higher the level of risk that a certain provider or supplier type poses, the greater the level of scrutiny with which CMS screens and reviews providers or suppliers within that category.

There are three categories of screening in § 424.518: Limited, moderate, and high. Irrespective of which category a provider or supplier type falls within, the MAC performs the following screening functions upon receipt of an initial enrollment application, a revalidation application, or an application to add a new practice location:

- Verifies that the provider or supplier meets all applicable federal regulations and state requirements for their provider or supplier type.
- Conducts state license verifications.
- Conducts database checks on a pre- and post-enrollment basis to ensure that providers and suppliers continue to meet the enrollment criteria for their provider or supplier type.

Providers and suppliers at the moderate and high categorical risk levels, however, must also undergo a site visit. Furthermore, for those in the high categorical risk level, the MAC performs two additional functions under § 424.518(c)(2). First, the MAC requires the submission of a set of fingerprints for a national background check from all individuals who maintain a 5 percent or greater direct or indirect ownership interest in the provider or supplier. Second, it conducts a fingerprint-based criminal history record check of the Federal Bureau of Investigation's (FBI) Integrated Automated Fingerprint Identification System on all individuals who maintain a 5 percent or greater direct or indirect ownership interest in the provider or supplier. These additional verification activities are intended to correspond to the heightened risk involved with such provider or supplier type.

We propose to add home infusion therapy suppliers to the types of providers and suppliers that are subject to the limited risk level of categorical screening. We have no recent evidence to suggest that home infusion therapy suppliers (as a supplier type) pose an enhanced threat of fraud, waste, or abuse that would warrant their placement in the moderate or high screening level; more precisely, our review of home infusion therapy services furnished by other existing provider and supplier types generally has not uncovered aberrant billing practices or significant fraud, waste, or abuse.

Our specific regulatory revisions would involve: (1) Redesignating existing § 424.518(a)(1)(vii) through (xvi) as, respectively, § 424.518(a)(1)(viii) through (xvii); (2) including home infusion therapy suppliers in revised § 424.518(a)(vii); and (3) stating in new § 424.68(c)(5) that home infusion therapy suppliers must successfully complete the limited categorical risk level of screening under § 424.518.

d. Denial of Enrollment and Appeals

We propose in new § 424.68(d)(1)(i) and (ii), respectively, that CMS may deny a home infusion therapy supplier's enrollment application on either of the following grounds:

- The home infusion therapy supplier does not meet all of the requirements for enrollment outlined in § 424.68 and in part 424, subpart P of this title; or
- Any of the reasons for denial of a prospective provider's or supplier's enrollment application in § 424.530 applies.

In new § 424.68(d)(2), we are proposing that a home infusion therapy supplier may appeal the denial of its enrollment application under 42 CFR part 498.

Section 424.68(d)(1)(i) is needed so CMS can ensure that unqualified home infusion therapy suppliers are kept out of the Medicare program. Concerning paragraphs (d)(1)(ii) and (2), the requirements in part 424, subpart P and the appeals provisions in part 498 would apply to home infusion therapy suppliers to the same extent as they would to all other providers and suppliers. Thus, we believe it is appropriate to include paragraphs (d)(1)(ii) and (2) within § 424.68.

e. Continued Compliance, Standards, and Reasons for Revocation

For reasons identical to those behind § 424.68(c), we propose several provisions in new § 424.68(e).

In paragraph (e)(1), we propose to state that, upon and after enrollment, a home infusion therapy supplier—

- Must remain currently and validly accredited as described in § 424.68(c)(3); and
- Remains subject to, and must remain in full compliance with, all of the provisions of—
  - ++ Section 424.68;
  - ++ Part 424, subpart P;
  - ++ Section 414.1515; and
  - ++ Part 486, subpart I.

In paragraph (e)(2), we are proposing that CMS may revoke a home infusion therapy supplier's enrollment if—

- The supplier does not meet the accreditation requirements as described in § 424.68(c)(3);
- The supplier does not comply with all of the provisions of—
  - ++ Section 424.68;
  - ++ Part 424, subpart P;
  - ++ Section 414.1515; and
  - ++ Part 486, subpart I; or
- Any of the revocation reasons in § 424.535 applies.

In new paragraph (e)(3), we propose that a home infusion therapy supplier may appeal the revocation of its enrollment under part 498.

f. Effective and Retrospective Date of Home Infusion Therapy Supplier Billing Privileges

Section 424.520 outlines the effective date of billing privileges for certain provider and supplier types that are eligible to enroll in Medicare. Section 424.520(d) sets forth the applicable effective date for physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, and opioid treatment programs. This effective date is the later of: (1) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or (2) the date that the supplier first began furnishing services at a new practice location. In a similar vein, § 424.521(a) states that physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, and opioid treatment programs may retrospectively bill for services when the supplier has met all program requirements (including state licensure requirements), and services were provided at the enrolled practice location for up to—

- Thirty days prior to their effective date if circumstances precluded enrollment in advance of providing services to Medicare beneficiaries; or
- Ninety days prior to their effective date if a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206 (Stafford Act) precluded enrollment in advance of providing services to Medicare beneficiaries.

To clarify the effective date of billing privileges for home infusion therapy suppliers and to account for circumstances that could prevent a home infusion therapy supplier's enrollment prior to the furnishing of Medicare services, we propose to include newly enrolling home infusion therapy suppliers within the scope of both §§ 424.520(d) and 424.521(a). We believe that the effective and retrospective billing dates addressed therein achieve a proper balance between the need for the prompt provision of home infusion therapy services and the importance of ensuring that each prospective home infusion therapy enrollee is carefully and closely screened for compliance with all applicable requirements.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

The following discusses the information collection requirements associated with § 424.68. Specifically, this section discusses our proposed burden estimates for the enrollment of home infusion therapy suppliers as well as the PRA exemption we are claiming for the appeals process.

1. Enrollment

As discussed in section V.B.2. of this proposed rule, home infusion therapy suppliers would be required to enroll in Medicare via the paper or internet-based version of the Form CMS–855B (''Medicare Enrollment Application: Clinics/Group Practices and Certain Other Suppliers'') (OMB Control Number: 0938–0685), or its electronic or successor application, and pay the application fee in accordance with § 424.514.

Using existing accreditation statistics and our internal data, we generally estimate that: (1) There are about 600 home infusion therapy suppliers that would be eligible for Medicare enrollment under our proposed provisions, all of whom would enroll in the initial year of our requirements; and (2) 50 home infusion therapy suppliers would annually enroll in Year 2 and in Year 3. This results in a total of 700 home infusion therapy suppliers enrolling over the next 3 years.

According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2019 (see *http://www.bls.gov/oes/current/oes_nat.htm*), the mean hourly wages for the following categories are:

TABLE 16: NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation Title	Occupation Code	Mean Hourly Wage ($/hr)	Fringe Benefits and Overhead ($/hr)	Adjusted Hourly Wage ($/hr)
Healthcare Diagnosing or Treating Practitioners	29-1000	49.26	49.26	98.52
Medical Secretaries and Administrative Assistants	43-6013	18.31	18.31	36.62

Consistent with Form CMS–855B projections made in recent rulemaking efforts, it would take each home infusion therapy supplier an average of 2.5 hours to obtain and furnish the information on the Form CMS–855B. Per our experience, the home infusion therapy supplier's medical secretary would be responsible for securing and reporting data on the Form CMS–855B and that this task takes approximately 2 hours. Additionally, the form would be reviewed and signed by a health diagnosing and treating practitioner of the home infusion therapy supplier, a process we estimate takes 30 minutes. Therefore, we project a first-year burden of 1,500 hours (600 suppliers × 2.5 hrs) at a cost of $73,500 (600 suppliers × ((2 hrs × $36.62/hr) + (0.5 hrs × $98.52/hr)), a second-year burden of 125 hours (50 suppliers × 2.5 hrs) at a cost of $6,125 (50 suppliers × ((2 hrs × $36.62/hr) + (0.5 hrs × $98.52/hr)), and a third-year burden of 125 hours (50 suppliers × 2.5 hrs) at a cost of $6,125 (50 suppliers × ((2 hrs × $36.62/hr) + (0.5 hrs × $98.52/hr)). In aggregate, we estimate a burden of 1,750 hours (1,500 hrs + 125 hrs + 125 hrs) at a cost of $85,750). When averaged over the typical 3-year OMB approval period, we estimate an annual burden of 583 hours (1,750 hrs/3) at a cost of $28,583 ($85,750/3).

We welcome comments on all of these estimates.

2. Appeals

As stated earlier in the preamble, newly proposed § 424.68(d)(2) and (e)(3) state that a home infusion therapy supplier may appeal the denial or revocation of its enrollment application under 42 CFR part 498. While there are information collection requirements associated with the appeals process, we believe they are exempt from the PRA. In accordance with the implementing regulations of the PRA at 5 CFR 1320.4(a)(2), the information collection requirements associated with the appeals process are subsequent to an administrative action; that is, the denial or revocation of a home infusion therapy supplier enrollment application. Therefore, we have not developed burden estimates. We also note our belief that any costs associated with home infusion therapy supplier appeals would, in any event, be *de minimis;* this is because we would anticipate, based on past experience, comparatively few denials and revocations of home infusion therapy supplier enrollments.

VII. Regulatory Impact Analysis

A. Statement of Need

1. Home Health Prospective Payment System (HH PPS)

Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare. In addition, section 1895(b) of the Act requires: (1) The computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and that such amounts be initially based on the most recent audited cost report data available to the Secretary; (2) the prospective payment amount under the HH PPS to be an appropriate unit of service based on the number, type, and duration of visits provided within that unit; and (3) the standardized prospective payment amount be adjusted to account for the effects of case-mix and wage levels among HHAs. Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the HH applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act requires the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of appropriate case-mix adjustment factors for significant variation in costs among different units of services. Lastly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level.

Section 1895(b)(3)(B)(iv) of the Act provides the Secretary with the authority to implement adjustments to the standard prospective payment amount (or amounts) for subsequent years to eliminate the effect of changes in aggregate payments during a previous year or years that were the result of changes in the coding or classification of different units of services that do not reflect real changes in case-mix. Section 1895(b)(5) of the Act provides the Secretary with the option to make changes to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Section 1895(b)(3)(B)(v) of the Act requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to the annual applicable percentage increase. Section 50208 of the BBA of 2018 (Pub. L. 115–123) requires the Secretary to implement a new methodology used to determine rural add-on payments for CYs 2019 through 2022.

Sections 1895(b)(2) and 1895(b)(3)(A) of the Act, as amended by section 51001(a)(1) and 51001(a)(2) of the BBA of 2018 respectively, required the Secretary to implement a 30-day unit of service, for 30-day periods beginning on and after January 1, 2020. The HH PPS wage index utilizes the wage adjustment factors used by the Secretary for purposes of Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act for hospital wage adjustments. In this proposed rule, we are proposing to adopt the new OMB delineations and apply a 5 percent cap only in CY 2021 on any decrease in a geographic area's wage index value from the wage index value from the prior calendar year. This transition would allow the effects of our proposed adoption of the revised CBSA delineations to be phased in over 2 years, where the estimated reduction in a geographic area's wage index would be capped at 5 percent in CY 2021 (that is, no cap would be applied to the reduction in the wage index for the second year (CY 2022)).

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 801(a)(1)(B)(i)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Given that, we note the following costs associated with the provisions of this proposed rule:

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The net transfer impact related to the changes in payments under the HH PPS for CY 2021 is estimated to be $540 million (2.6 percent). Therefore, we estimate that this rule is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that presents our best estimate of the costs and benefits of this rule.

C. Anticipated Effects

1. HH PPS

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any one year. For the purposes of the RFA, we estimate that almost all HHAs and home infusion therapy suppliers are small entities as that term is used in the RFA. Individuals and states are not included in the definition of a small entity. The economic impact assessment is based on estimated Medicare payments (revenues) and HHS's practice in interpreting the RFA is to consider effects economically ''significant'' only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of HHAs' visits are Medicare paid visits and therefore the majority of HHAs' revenue consists of Medicare payments. Based on our analysis, we conclude that the policies proposed in this rule would not result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of HHAs. Therefore, the Secretary has determined that this HH PPS proposed rule would have a not have significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule is not applicable to hospitals. Therefore, the Secretary has determined this final rule will not have a significant economic impact on the operations of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or on the private sector of $156 million or more.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on state or local governments.

2. HH QRP

We are not proposing any changes to the HH QRP. Therefore, we are not providing any estimated impacts.

3. Change to the CoP OASIS Requirement

No impact was assessed for this provision in the January 13, 2017 final rule titled ''Medicare and Medicaid Program: Conditions of Participation for Home Health Agencies (82 FR 4504). Therefore, we do not believe that there are any burden reductions to be assessed when removing this requirement.

4. Payment for Home Infusion Therapy Services

In the CY 2020 HH PPS final rule with comment period, we estimated that the implementation of the permanent home infusion therapy benefit would result in a 3.6 percent decrease ($2 million) in payments to home infusion therapy suppliers in CY 2021 (84 FR 60639). This decrease reflects the exclusion of statutorily-excluded drugs and biologicals, and is representative of a wage-adjusted 4-hour payment rate, compared to a wage-adjusted 5-hour payment rate.

There are no new proposals in this rule related to payments for home infusion therapy services in CY 202l. However, we estimate that the impact of updating the payment rates for home infusion therapy services for CY 2021, based on the PFS amounts for CY 2021, is no more than a 1 to 2 percent increase/decrease in payments ($1 million or less). The CY 2021 proposed PFS amounts were not available at the time of rulemaking; therefore, this estimate is based on the impact between the CY 2019 PFS amounts compared to the CY 2020 PFS amounts outlined in the CY 2020 HH PPS final rule with comment period (84 FR 60639).

5. Home Infusion Therapy Supplier Requirements

As stated previously, we are proposing that home infusion therapy suppliers be required to enroll in Medicare and pay an application fee at the time of enrollment in accordance with § 424.514.

The application fees for each of the past 3 calendar years were or are $569 (CY 2018), $586, (CY 2019), and $595 (CY 2020). Consistent with § 424.514, the differing fee amounts are predicated on changes/increases in the Consumer Price Index (CPI) for all urban consumers (all items; United State city average, CPI–U) for the 12-month period ending on June 30 of the previous year. Although we cannot predict future changes to the CPI, the fee amounts between 2018 and 2020 increased by an average of $13 per year. We believe this is a reasonable barometer with which to establish estimates (strictly for purposes of the proposed rule) of the fee amounts in the first 3 CYs of this rule (that is, 2021, 2022, and 2023). Thus, we project a fee amount of $608 in 2021, $621 for 2022, and $634 for 2023.

Applying these prospective fee amounts to the number of projected applicants in the rule's first 3 years, we estimate a total application fee cost to enrollees of $364,800 (or 600 × $608) in the first year, $31,050 (or 50 × $621) in the second year, and $31,700 (or 50 × $634) in the third year. (This constitutes an average annual figure over the first 3 years of this proposed requirement of $142,517). As referenced in Table 1 of this proposed rule, this would represent a transfer from home infusion therapy suppliers to the federal government.

As noted in Table 1 and section VI.B.1. of this proposed rule, the estimated average annual burden associated with home infusion therapy supplier enrollment over the 3-year OMB approval period is 583 hours at a cost of $28,583.

6. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we must estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that would review the rule, we assume that the total number of unique reviewers of this year's proposed rule would be the similar to the number of commenters on last year's proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed this year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we believe that the number of past commenters would be a fair estimate of the number of reviewers of this rule. We welcome any comments on the approach in estimating the number of entities which would review this proposed rule. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We seek comments on this assumption. Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $109.36 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*. Assuming an average reading speed of 250 words per minute, we estimate that it would take approximately 1.3 hours for the staff to review half of this proposed rule, which consists of approximately 39,000 words. For each HHA that reviews the rule, the estimated cost is $142.17 (1.3 hours × $109.36). Therefore, we estimate that the total cost of reviewing this proposed rule is $79,614 ($142.17 × 560 reviewers). For purposes of this estimate, the number of anticipated reviewers in this year's rule is equivalent to the number of commenters on the CY 2020 HH PPS proposed rule.

D. Detailed Economic Analysis

This rule proposes updates to Medicare payments under the HH PPS for CY 2021. The impact analysis of this proposed rule presents the estimated expenditure effects of policy changes proposed in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case mix. This analysis incorporates the latest estimates of growth in service use and payments under the Medicare HH benefit, based primarily on Medicare claims data for episodes ending on or before December 31, 2019. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the Affordable Care Act, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 17 represents how HHA revenues are likely to be affected by the policy changes proposed in this rule for CY 2021. For this analysis, we used an analytic file with linked CY 2019 OASIS assessments and HH claims data for dates of service that ended on or before December 31, 2019. The first column of Table 17 classifies HHAs according to a number of characteristics including provider type, geographic region, and urban and rural locations. The second column shows the number of facilities in the impact analysis. The third column shows the payment effects of updating to the CY 2021 wage index. The fourth column shows the effects of moving from the old OMB delineations to the new OMB delineations with a 5 percent cap on wage index decreases. The fifth column shows the payment effects of the CY 2021 rural add-on payment provision in statute. The sixth column shows the payment effects of the CY 2021 home health payment update percentage. And the last column shows the combined effects of all the policies proposed in this rule.

Overall, it is projected that aggregate payments in CY 2021 would increase by 2.6 percent. As illustrated in Table 17, the combined effects of all of the changes vary by specific types of providers and by location. We note that some individual HHAs within the same group may experience different impacts on payments than others due to the distributional impact of the CY 2021 wage index, the percentage of total HH PPS payments that were subject to the low-utilization payment adjustment

(LUPA) or paid as outlier payments, and the degree of Medicare utilization.

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TABLE 17: ESTIMATED HHA IMPACTS BY FACILITY TYPE AND AREA OF THE COUNTRY, CY 2021

	Number of Agencies	CY 2021 Updated Wage Index (CY2020 Payments)	OMB Delineations with 5 percent Cap	CY 2021 Rural Add-On	CY 2021 HH Payment Update Percentage	Total Impact
All Agencies	**9,758**	**0.0%**	**0.0%**	**-0.1%**	**2.7%**	**2.6%**
Facility Type and Control						
Free-Standing/Other Vol/NP	961	-0.1%	0.0%	-0.1%	2.7%	2.5%
Free-Standing/Other Proprietary	7,867	0.0%	0.0%	-0.1%	2.7%	2.6%
Free-Standing/Other Government	196	0.3%	0.1%	-0.3%	2.7%	2.8%
Facility-Based Vol/NP	514	0.1%	0.1%	-0.2%	2.7%	2.7%
Facility-Based Proprietary	57	-0.2%	0.3%	-0.2%	2.7%	2.6%
Facility-Based Government	163	-0.1%	0.1%	-0.3%	2.7%	2.4%
Subtotal: Freestanding	9,024	0.0%	0.0%	-0.1%	2.7%	2.6%
Subtotal: Facility-based	734	0.1%	0.1%	-0.2%	2.7%	2.7%
Subtotal: Vol/NP	1,475	0.0%	0.0%	-0.1%	2.7%	2.6%
Subtotal: Proprietary	7,924	0.0%	0.0%	-0.1%	2.7%	2.6%
Subtotal: Government	359	0.1%	0.1%	-0.3%	2.7%	2.6%
Facility Type and Control: Rural						
Free-Standing/Other Vol/NP	228	0.1%	0.0%	-0.7%	2.7%	2.1%
Free-Standing/Other Proprietary	814	0.2%	0.0%	-0.5%	2.7%	2.4%
Free-Standing/Other Government	131	0.2%	0.1%	-0.8%	2.7%	2.2%
Facility-Based Vol/NP	233	0.1%	0.0%	-0.7%	2.7%	2.1%
Facility-Based Proprietary	26	0.5%	0.5%	-0.6%	2.7%	3.1%
Facility-Based Government	125	0.3%	0.0%	-0.7%	2.7%	2.3%
Facility Type and Control: Urban						
Free-Standing/Other Vol/NP	733	-0.1%	0.0%	-0.1%	2.7%	2.5%
Free-Standing/Other Proprietary	7,053	0.0%	0.0%	-0.1%	2.7%	2.6%
Free-Standing/Other Government	65	0.4%	0.1%	-0.1%	2.7%	3.1%
Facility-Based Vol/NP	281	0.1%	0.1%	-0.1%	2.7%	2.8%
Facility-Based Proprietary	31	-0.5%	0.2%	-0.1%	2.7%	2.3%
Facility-Based Government	38	-0.4%	0.1%	-0.1%	2.7%	2.3%
Facility Location: Urban or Rural						
Rural	1,557	0.2%	0.0%	-0.6%	2.7%	2.3%
Urban	8,201	0.0%	0.0%	-0.1%	2.7%	2.6%
Facility Location: Region of the Country (Census Divisions)						
New England	335	-1.1%	-0.1%	-0.1%	2.7%	1.4%
Mid Atlantic	452	0.5%	0.3%	-0.1%	2.7%	3.4%
East North Central	1,740	0.0%	-0.1%	-0.1%	2.7%	2.5%
West North Central	648	-0.5%	0.0%	-0.3%	2.7%	1.9%
South Atlantic	1,566	0.1%	0.0%	-0.1%	2.7%	2.7%
East South Central	381	0.0%	0.0%	-0.3%	2.7%	2.4%
West South Central	2,378	0.2%	0.0%	-0.1%	2.7%	2.8%
Mountain	683	-0.2%	0.0%	-0.1%	2.7%	2.4%
Pacific	1,535	0.1%	0.1%	0.0%	2.7%	2.9%
Outlying	40	-1.1%	-0.2%	-0.1%	2.7%	1.3%

	Number of Agencies	CY 2021 Updated Wage Index (CY2020 Payments)	OMB Delineations with 5 percent Cap	CY 2021 Rural Add-On	CY 2021 HH Payment Update Percentage	Total Impact
Facility Size (Number of 60-day Episodes)						
< 100 episodes	2,578	-0.1%	0.0%	-0.1%	2.7%	2.5%
100 to 249	2,087	-0.1%	0.0%	-0.1%	2.7%	2.5%
250 to 499	2,004	-0.1%	0.0%	-0.1%	2.7%	2.5%
500 to 999	1,612	0.0%	0.0%	-0.1%	2.7%	2.6%
1,000 or More	1,477	0.0%	0.0%	-0.1%	2.7%	2.6%

Source: CY 2019 Medicare claims data for episodes ending on or before December 31, 2019 for which we had a linked OASIS assessment (as of March 13, 2020)
Notes: This analysis omits 710,316 simulated 30-day periods not grouped under the PDGM (either due to a missing SOC OASIS, because they could be assigned to a clinical grouping, or had missing therapy/nursing visits). Additionally, another 38,192 periods were excluded with missing wage index information, a further 7 periods were excluded with missing NRS weights, and 2,040 periods with a missing urban/rural indicator. The standard 30-day payment amount used to achieve impact neutrality does not incorporate any behavioral assumptions. PDGM impacts were modeled using CY2020 payment parameters, wage indexes, and rural add-on policy, with a 30-day standard amount of $1,864.03.

REGION KEY:
New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Middle Atlantic=Pennsylvania, New Jersey, New York;
South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia
East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin
East South Central=Alabama, Kentucky, Mississippi, Tennessee
West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West South Central=Arkansas, Louisiana, Oklahoma, Texas
Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming
Pacific=Alaska, California, Hawaii, Oregon, Washington
Other=Guam, Puerto Rico, Virgin Islands

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E. Alternatives Considered

For the CY 2021 Home Health Prospective Payment Rate Update, we considered alternatives to the proposals articulated in section III.D of this proposed rule. We considered not adopting the OMB delineations. However, we have historically adopted the latest OMB delineations as we believe that implementing the new OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. Additionally, we considered not implementing the 1-year 5 percent cap on wage index decreases. While there are some minimal impacts on certain HHAs as a result of this 5 percent cap proposal as shown in the regulatory impact analysis of this proposed rule, we decided that the 5 percent cap was a better option for the transition because it would mitigate potential negative impacts from the transition to the new OMB delineations and allow providers the opportunity to adjust to the changes in their wage index values gradually.

F. Accounting Statement and Tables

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*), in Table 18, we have prepared an accounting statement showing the classification of the transfers and benefits associated with the CY 2021 HH PPS provisions of this rule.

TABLE 18: ACCOUNTING STATEMENT: HH PPS CLASSIFICATION OF ESTIMATED TRANSFERS AND BENEFITS, FROM CY 2020 TO 2021

Category	Transfers
Annualized Monetized Transfers	$540 million
From Whom to Whom?	Federal Government to HHAs

G. Regulatory Reform Analysis Under E.O. 13771

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. It has been determined that this proposed rule is an action that primarily results in transfers and does not impose more than de minimis costs as described previously and thus is not a regulatory or deregulatory action for the purposes of Executive Order 13771.

H. Conclusion

In conclusion, we estimate that the provisions in this proposed rule would result in an estimated net increase in HH payments of 2.6 percent for CY 2021 ($540 million). The $540 million increase in estimated payments for CY 2021 reflects the effects of the CY 2021 home health payment update percentage of 2.7 percent ($560 million increase) and an estimated −0.1 percent decrease in payments due to the rural add-on percentages mandated by the Bipartisan Budget Act of 2018 for CY 2021 ($20 million decrease).

This analysis, together with the remainder of this preamble, provides an initial Regulatory Flexibility Analysis.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical centers, Health facilities, Health professions, Medicare, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 2. Section 409.43 is amended by revising paragraphs (a) introductory text, (a)(1), and (3) to read as follows:

§ 409.43 Plan of care requirements.

(a) *Contents.* An individualized plan of care must be established and periodically reviewed by the certifying physician or allowed practitioner.

(1) The HHA must be acting upon a plan of care that meets the requirements of this section for HHA services to be covered.

* * * * *

(3)(i) The plan of care must include all of the following:

(A) The identification of the responsible discipline(s) and the frequency and duration of all visits as well as those items listed in § 484.60(a) of this chapter that establish the need for such services.

(B) Any provision of remote patient monitoring or other services furnished via a telecommunications system and such services must be tied to the patient-specific needs as identified in the comprehensive assessment, cannot substitute for a home visit ordered as part of the plan of care, and cannot be considered a home visit for the purposes of patient eligibility or payment.

(C) A description of how the use of such technology will help to achieve the goals outlined on the plan of care.

(ii) All care provided must be in accordance with the plan of care.

* * * * *

■ 3. Section 409.46 is amended by revising paragraph (e) to read as follows:

§ 409.46 Allowable administrative costs.

* * * * *

(e) *Telecommunications technology.* Telecommunications technology, as indicated on the plan of care, can include: Remote patient monitoring, defined as the collection of physiologic data (for example, ECG, blood pressure, glucose monitoring) digitally stored and/or transmitted by the patient or caregiver or both to the home health agency; teletypewriter (TTY) technology; and 2-way audio-video telecommunications technology that allows for real-time interaction between the patient and clinician. The costs of any equipment, set-up, and service related to the technology are allowable only as administrative costs. Visits to a beneficiary's home for the sole purpose of supplying, connecting, or training the patient on the technology, without the provision of a skilled service, are not separately billable.

■ 4. Section 409.49 is amended by adding paragraph (h) to read as follows:

§ 409.49 Excluded services.

* * * * *

(h) *Services covered under the Home Infusion Therapy benefit.* Services that are covered under the home infusion therapy benefit as outlined at § 486.525 of this chapter, including any home infusion therapy services furnished to a Medicare beneficiary that is under a home health plan of care, are excluded from coverage under the Medicare home health benefit. Excluded home infusion therapy services pertain to the items and services for the provision of home infusion drugs, as defined at § 486.505 of this chapter. Services for the provision of drugs and biologicals not covered under this definition may continue to be provided under the Medicare home health benefit.

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

■ 5. The authority citation for part 414 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr(b)(l).

■ 6. Section 414.1505 is amended by adding paragraph (c) to read as follows:

§ 414.1505 Requirement for payment.

* * * * *

(c) The home infusion therapy supplier must be enrolled in Medicare consistent with the provisions of § 424.68 and part 424, subpart P of this chapter.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 7. The authority citation for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 8. Section 424.68 is added to subpart E to read as follows:

§ 424.68 Enrollment requirements for home infusion therapy suppliers.

(a) *Definition.* For purposes of this section, a home infusion therapy supplier means a supplier of home infusion therapy that meets all of the following requirements:

(1) Furnishes infusion therapy to individuals with acute or chronic conditions requiring administration of home infusion drugs.

(2) Ensures the safe and effective provision and administration of home infusion therapy on a 7-day-a-week, 24-hour-a-day basis.

(3) Is accredited by an organization designated by the Secretary in accordance with section 1834(u)(5) of the Act.

(4) Is enrolled in Medicare as a home infusion therapy supplier consistent with the provisions of this section and of part 424, subpart P of this chapter.

(b) *General requirement.* For a supplier to receive Medicare payment for the provision of home infusion therapy supplier services, the supplier must qualify as a home infusion therapy supplier (as defined in this section) and be in compliance with all applicable provisions of this section and of part 424, subpart P of this chapter.

(c) *Specific requirements for enrollment.* To enroll in the Medicare program as a home infusion therapy supplier, a home infusion therapy supplier must meet all of the following requirements:

(1)(i) Fully complete and submit the Form CMS–855B application (or its electronic or successor application) to its applicable Medicare contractor.

(ii) Certify via the Form CMS–855B that the home infusion therapy supplier meets and will continue to meet the specific requirements and standards for enrollment described in this section and in part 424, subpart P of this chapter.

(2) Comply with the application fee requirements in § 424.514.

(3) Be currently and validly accredited as a home infusion therapy supplier by a CMS-recognized home infusion therapy supplier accreditation organization.

(4) Comply with § 414.1515 of this chapter and all provisions of part 486, subpart I of this chapter.

(5) Successfully complete the limited categorical risk level of screening under § 424.518 of this title.

(d) *Denial of enrollment.* (1) Enrollment denial by CMS. CMS may deny a supplier's enrollment application as a home infusion therapy supplier on either of the following grounds:

(i) The supplier does not meet all of the requirements for enrollment outlined in § 424.68 and in part 424, subpart P of this chapter.

(ii) Any of the applicable denial reasons in § 424.530.

(2) Appeal of an enrollment denial. A supplier may appeal the denial of its enrollment application as a home infusion therapy supplier under part 498 of this chapter.

(e) *Continued compliance, standards, and reasons for revocation.* (1) Upon and after enrollment, a home infusion therapy supplier—

(i) Must remain currently and validly accredited as described in paragraph (c)(3) of this section.

(ii) Remains subject to, and must remain in full compliance with, all of the provisions of—

(A) This section;

(B) Part 424, subpart P of this chapter;

(C) Section 414.1515 of this chapter; and

(D) Part 486, subpart I of this chapter.

(2) CMS may revoke a home infusion therapy supplier's enrollment on any of the following grounds:

(i) The supplier does not meet the accreditation requirements as described in paragraph (c)(3) of this section.

(ii) The supplier does not comply with all of the provisions of—

(A) This section;

(B) Part 424, subpart P of this chapter;

(C) Section 414.1515 of this chapter; and

(D) Part 486, subpart I of this chapter; or

(iii) Any of the revocation reasons in § 424.535 applies.

(3) A home infusion therapy supplier may appeal the revocation of its enrollment under part 498 of this chapter.

■ 9. Section 424.518 is amended by redesignating paragraphs (a)(1)(vii) through (xvi) as paragraphs (a)(1)(viii) through (xvii) and adding a new paragraph (a)(1)(vii) to read as follows:

§ 424.518 Screening levels for Medicare providers and suppliers.

* * * * *

(a) * * *

(1) * * *

(vii) Home infusion therapy suppliers.

* * * * *

■ 10. Section 424.520 is amended by revising paragraph (d) introductory text to read as follows:

§ 424.520 Effective date of Medicare billing privileges.

* * * * *

(d) *Physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers.* The effective date for billing privileges for physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers is the later of—

* * * * *

■ 11. Section 424.521 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 424.521 Request for payment by physicians, non-physician practitioners, physician and non-physician organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers.

(a) Physicians, non-physician practitioners, physician and non-physician practitioner organizations, ambulance suppliers, opioid treatment programs, and home infusion therapy suppliers may retrospectively bill for services when the physician, non-physician practitioner, physician or non-physician organization, ambulance supplier, opioid treatment program, or home infusion therapy supplier has met all program requirements, including State licensure requirements, and services were provided at the enrolled practice location for up to —

* * * * *

PART 484—HOME HEALTH SERVICES

■ 12. The authority citation for part 484 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

§ 484.45 [Amended]

■ 13. Section 484.45 is amended by—

■ a. Removing paragraph (c)(2); and

■ b. Redesignating paragraphs (c)(3) and (4) as paragraphs (c)(2) and (3), respectively.

Dated: June 12, 2020.

Seema Verma,

Administrator, Centers for Medicare and Medicaid Services.

Dated: June 19, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–13792 Filed 6–25–20; 4:15 pm]

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