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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2022–0007]

Privacy Act of 1974: Implementation of Exemptions; U.S. Department of Homeland Security/Office of Inspector General–002 Investigative Records System of Records

AGENCY: Office of Inspector General, U.S. Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of a modified system of records titled, ''DHS/Office of Inspector General (OIG)–002 Investigative Records System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective January 27, 2022.

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Lynn Parker Dupree, (202) 343–1717, *Privacy@hq.dhs.gov,* Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG) published a notice of proposed rulemaking in the **Federal Register**, 86 FR 58226 (October 21, 2021), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/OIG–002 Investigative Records System of Records. The DHS/OIG–002 Investigative Records System of Records notice was published concurrently in the **Federal Register**, 86 FR 58292 (October 21, 2021), and comments were invited on both the Notice of Proposed Rulemaking (NPRM) and System of Records Notice (SORN).

DHS OIG is responsible for a wide range of oversight functions, including to initiate, conduct, supervise, and coordinate audits, investigations, inspections, and other reviews relating to the programs and operations of DHS. The DHS/OIG–002 Investigative Records System of Records assists DHS OIG with receiving and processing allegations of misconduct, including violations of criminal and civil laws, as well as administrative policies and regulations pertaining to DHS employees, contractors, grantees, and other individuals and entities within DHS. The system includes complaints and investigation-related files. DHS OIG manages information provided during the course of its investigations to: Create records showing dispositions of allegations; audit actions taken by DHS management regarding employee misconduct; audit legal actions taken following referrals to the U.S. Department of Justice (DOJ) for criminal prosecution or civil action; calculate and report statistical information; manage OIG investigators' training; and manage Government-issued investigative property and other resources used for investigative activities.

Public Comments

DHS received one comment on the System of Records Notice and zero comments on the Notice of Proposed Rulemaking. The comment received was in agreement with the Department moving forward with the rulemaking and notice. As such, the Department will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends chapter I of title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In appendix C to part 5, revise section 5 to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

5. The DHS/OIG–002 Investigative Records System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/OIG–002 Investigative Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/OIG–002 Investigative Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), has exempted this system from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

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

evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. When an investigation has been completed, information on disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

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

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

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

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

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

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

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

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

* * * * *

Lynn P. Dupree,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. 2022–01559 Filed 1–26–22; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 226

[FNS–2011–0029]

RIN 0584–AE18

CACFP Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010; Correcting Amendments

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Correcting amendments.

SUMMARY: On October 18, 2021, the Food and Nutrition Service revised rules concerning meal pattern tables for the National School Lunch Program and the Child and Adult Care Food Program. The document contained incorrect table entries. This document corrects the final regulations.

DATES: Effective January 27, 2022 and applicable beginning October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Alice McKenney, Branch Chief, Child Nutrition Division, 703–305–2590.

SUPPLEMENTARY INFORMATION: This is a correcting amendment to the Food and Nutrition Service's (FNS's) technical amendments published October 18, 2021 (86 FR 57544). The technical amendments inadvertently omitted a distinct value for ready-to-eat cereal requirements in two of the tables and misprinted the amount of yogurt required in one of the tables. This amendment also corrects a typographical error related to the amount of milk required in one of the tables. Prior to the technical amendment published on October 18, 2021, both infant cereal and ready-to-eat breakfast cereal requirements were presented in tablespoons; 0–4 tablespoons of either type of cereal were required for infants when cereal was served as a snack. In Table 6 to 7 CFR 210.10(o)(4)(ii) for Infant Snack Meal Pattern and Table 1 to 7 CFR 226.20(b)(5) for Infant Meal Patterns, the correct conversion of 0–4 tablespoons of ready-to-eat breakfast cereal to ounces is 0 to ¼ ounce equivalents, not 0 to ½ ounce equivalents as was erroneously printed in the October 18, 2021, amendment. In Table 4 to 7 CFR 226.20(c)(3) for Child and Adult Care Food Program Snack, four of the columns (Ages 1–2, 3–5, 6–12, and 13–18) included misprints for yogurt amounts; ''2 ounces or ½ cup'' is being corrected to ''2 ounces or ¼ cup'' and ''4 ounces or ¾ cup'' is being corrected to ''4 ounces or ½ cup''. In the same table, the amount of milk for ages 3–5 is being corrected from 6 fluid ounces to 4 fluid ounces. The reference to 6 fluid ounces was an error when converting ½ cup to fluid ounces in the *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements* (83 FR 63775 (Dec. 12, 2018)) which inadvertently carried forward into the October 18, 2021, technical correction.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 226

Accounting, Aged, American Indians, Day care, Food assistance programs, Grant programs, Grant programs—health, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, FNS amends 7 CFR parts 210 and 226 by making the following correcting amendments:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.10 by revising table 6 to paragraph (o)(4)(ii) to read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(o) * * *

(4) * * *

(ii) * * *

TABLE 6 TO PARAGRAPH (o)(4)(ii)—INFANT SNACK MEAL PATTERN

Birth through 5 months	6 through 11 months
4–6 fluid ounces breastmilk [1] or formula [2]	2–4 fluid ounces breastmilk [1] or formula; [2] and 0–½ ounce equivalent bread; [3 4] or 0–¼ ounce equivalent crackers; [3 4] or 0–½ ounce equivalent infant cereal; [2 4] or 0–¼ ounce equivalent ready-to-eat breakfast cereal; [3 4 5 6] and 0–2 tablespoons vegetable or fruit, or a combination of both.[6 7]

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] A serving of grains must be whole grain-rich, enriched meal, or enriched flour.
[4] Refer to FNS guidance for additional information on crediting different types of grains.
[5] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).
[6] A serving of this component is required when the infant is developmentally ready to accept it.
[7] Fruit and vegetable juices must not be served.

* * * * *

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 3. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 4. Amend § 226.20 by revising table 1 to paragraph (b)(5) and table 4 to paragraph (c)(3) to read as follows:

§ 226.20 Requirements for meals.

* * * * *

(b) * * *

(5) * * *

TABLE 1 TO PARAGRAPH (b)(5)—INFANT MEAL PATTERNS

Infants	Birth through 5 months	6 through 11 months
Breakfast, Lunch, or Supper	4–6 fluid ounces breastmilk [1] or formula [2]	6–8 fluid ounces breastmilk [1] or formula; [2] and 0–½ ounce equivalent infant cereal; [2 3] or 0–4 tablespoons meat, fish, poultry, whole egg, cooked dry beans, or cooked dry peas; or 0–2 ounces of cheese; or 0–4 ounces (volume) of cottage cheese; or 0–4 ounces or ½ cup of yogurt; [4] or a combination of the above; [5] and 0–2 tablespoons vegetable or fruit, or a combination of both.[5 6]
Snack	4–6 fluid ounces breastmilk [1] or formula [2]	2–4 fluid ounces breastmilk [1] or formula; [2] and 0–½ ounce equivalent bread; [3 7] or 0–¼ ounce equivalent crackers; [3 7] or 0–½ ounce equivalent infant cereal; [2 3] or 0–¼ ounce equivalent ready-to-eat breakfast cereal; [3 5 7 8] and 0–2 tablespoons vegetable or fruit, or a combination of both.[5 6]

[1] Breastmilk or formula, or portions of both, must be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months. For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered at a later time if the infant will consume more.
[2] Infant formula and dry infant cereal must be iron-fortified.
[3] Refer to FNS guidance for additional information on crediting different types of grains.
[4] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.
[5] A serving of this component is required when the infant is developmentally ready to accept it.
[6] Fruit and vegetable juices must not be served.
[7] A serving of grains must be whole grain-rich, enriched meal, or enriched flour.
[8] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

(c) * * *

(3) * * *

TABLE 4 TO PARAGRAPH (c)(3)—CHILD AND ADULT CARE FOOD PROGRAM SNACK

[Select the two of the five components for a reimbursable meal]

Food components and food items [1]	Minimum quantities				
	Ages 1–2	Ages 3–5	Ages 6–12	Ages 13–18 [2] (at-risk afterschool programs and emergency shelters)	Adult participants
Fluid Milk [3]	4 fluid ounces	4 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces.
Meat/meat alternates (edible portion as served):					
Lean meat, poultry, or fish	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Tofu, soy products, or alternate protein products [4].	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Cheese	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Large egg	½	½	½	½	½.
Cooked dry beans or peas	⅛ cup	⅛ cup	¼ cup	¼ cup	¼ cup.
Peanut butter or soy nut butter or other nut or seed butters.	1 Tbsp	1 Tbsp	2 Tbsp	2 Tbsp	2 Tbsp.
Yogurt, plain or flavored unsweetened or sweetened [5].	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup	4 ounces or ½ cup	4 ounces or ½ cup.
Peanuts, soy nuts, tree nuts, or seeds	½ ounce	½ ounce	1 ounce	1 ounce	1 ounce.
Vegetables [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Fruits [6]	½ cup	½ cup	¾ cup	¾ cup	½ cup.
Grains (oz. eq.) [7 8 9]	½ ounce equivalent	½ ounce equivalent	1 ounce equivalent	1 ounce equivalent	1 ounce equivalent.

Endnotes:

[1] Select two of the five components for a reimbursable snack. Only one of the two components may be a beverage.

[2] Larger portion sizes than specified may need to be served to children 13 through 18 years old to meet their nutritional needs.

[3] Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent fat or less) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent fat or less) or unflavored or flavored fat-free (skim) milk for children 6 years old and older and adults. For adult participants, 6 ounces (weight) or ¾ cup (volume) of yogurt may be used to meet the equivalent of 8 ounces of fluid milk once per day when yogurt is not served as a meat alternate in the same meal.

[4] Alternate protein products must meet the requirements in appendix A to this part.

[5] Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

[6] Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

[7] At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

[8] Refer to FNS guidance for additional information on crediting different types of grains.

[9] Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

* * * * *

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2022–01582 Filed 1–26–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2020–1086]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Amazon Logistics, Inc. MK27–2 Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of final airworthiness criteria.

SUMMARY: The FAA announces the special class airworthiness criteria for the Amazon Logistics, Inc. Model MK27–2 unmanned aircraft. This document sets forth the airworthiness criteria the FAA finds to be appropriate and applicable for the unmanned aircraft design.

DATES: These airworthiness criteria are effective February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559.

SUPPLEMENTARY INFORMATION:

Background

Amazon Logistics, Inc., (Amazon) applied to the FAA on October 13, 2017, for a special class type certificate under Title 14, Code of Federal Regulations (14 CFR) 21.17(b) for the Amazon Model MK27–2 [1] unmanned aircraft system (UAS).

The Model MK27–2 consists of a powered lift unmanned aircraft (UA) and its associated elements (AE) including communication links and components that control the UA. The Model MK27–2 UA has a maximum gross takeoff weight of 89 pounds. It is approximately 78 inches in width, 65 inches in length, and 46 inches in height. The Model MK27–2 UA uses battery-powered electric motors for vertical takeoff, landing, and forward flight. The UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Amazon anticipates operators will use the Model MK27–2 for delivering packages. The proposed concept of operations (CONOPS) for the Model MK27–2 identifies a maximum operating altitude of 400 feet above ground level (AGL), a maximum cruise speed of 60 knots, operations beyond visual line of sight (BVLOS) of the pilot, and operations over human beings. Amazon has not requested type certification for flight into known icing conditions for the Model MK27–2.

The FAA issued a notice of proposed airworthiness criteria for the Amazon MK27 UAS, which published in the **Federal Register** on November 20, 2020 (85 FR 74271).

Summary of Changes From the Proposed Airworthiness Criteria

Based on the comments received, these final airworthiness criteria reflect the following changes, as explained in more detail under Discussion of Comments: A new section containing

[1] Amazon's original application identified its model as the MK27. On December 20, 2021, Amazon amended its application to change the aircraft model designation from MK27 to MK27–2.

definitions; revisions to the CONOPS requirement; changing the term ''critical part'' to ''flight essential part'' in D&R.135; changing the basis of the durability and reliability testing from population density to limitations prescribed for the operating environment identified in the applicant's CONOPS per D&R.001; and, for the demonstration of certain required capabilities and functions as required by D&R.310.

Additionally, the FAA re-evaluated its approach to type certification of low-risk UA using durability and reliability testing. Safe UAS operations depend and rely on both the UA and the AE. As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA has revised the airworthiness criteria to define a boundary between the UA type certification and subsequent operational evaluations and approval processes for the UAS (*i.e.,* waivers, exemptions, and/or operating certificates).

To reflect that these airworthiness criteria rely on durability and reliability (D&R) testing for certification, the FAA changed the prefix of each section from ''UAS'' to ''D&R.''

Lastly, the FAA revised D&R.001(g) to clarify that the operational parameters listed in that paragraph are examples and not an all-inclusive list.

Discussion of Comments

The FAA received responses from 27 commenters. The majority of the commenters were individuals. Other commenters included the European Union Aviation Safety Agency (EASA), unmanned aircraft manufacturers, a helicopter operator, Embry-Riddle Aeronautical University, and organizations such as the Air Line Pilots Association (ALPA), the Association for Unmanned Vehicle Systems International (AUVSI), Droneport Texas, LLC, the National Agricultural Aviation Association (NAAA), Northeast UAS Airspace Integration Research Alliance, Inc. (NUAIR), and the Small UAV Coalition.

Support

Comment Summary: ALPA, AUVSI, NUAIR, and the Small UAV Coalition expressed support for type certification as a special class of aircraft and establishing airworthiness criteria under § 21.17(b). AUVSI and the Small UAV Coalition also supported the FAA's proposed use of performance-based standards.

Terminology: Loss of Flight

Comment Summary: An individual commenter requested the FAA define the term ''loss of flight'' and clarify how it is different from ''loss of control.'' The commenter questioned whether loss of flight meant the UA could not continue its intended flight plan but could safely land or terminate the flight.

FAA Response: The FAA has added a new section, D&R.005, to define the terms ''loss of flight'' and ''loss of control'' for the purposes of these airworthiness criteria. ''Loss of flight'' refers to a UA's inability to complete its flight as planned, up to and through its originally planned landing. ''Loss of flight'' includes scenarios where the UA experiences controlled flight into terrain or obstacles, or any other collision, or a loss of altitude that is severe or non-recoverable. ''Loss of flight'' includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

''Loss of control'' means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. ''Loss of control'' means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristic, or similar occurrence, which could generally lead to a crash.

Terminology: Skill and Alertness of Pilot

Comment Summary: Two commenters requested the FAA clarify terminology with respect to piloting skill and alertness. Droneport Texas LLC stated that the average pilot skill and alertness is currently undefined, as remote pilots do not undergo oral or practical examinations to obtain certification. NUAIR noted that, despite the definition of ''exceptional piloting skill and alertness'' in Advisory Circular (AC) 23–8C, *Flight Test Guide for Certification of Part 23 Airplanes,* there is a significant difference between the average skill and alertness of a remote pilot certified under 14 CFR part 107 and a pilot certified under 14 CFR part 61. The commenter requested the FAA clarify the minimum qualifications and ratings to perform as a remote pilot of a UAS with a type certificate.

FAA Response: These airworthiness criteria do not require exceptional piloting skill and alertness for testing. The FAA included this as a requirement to ensure the applicant passes testing by using pilots of average skill who have been certificated under part 61, as opposed to highly trained pilots with thousands of hours of flight experience. Because the Amazon MK27–2 has a maximum weight above 55 pounds, the remote pilot provision of part 107 does not apply.

Concept of Operations

The FAA proposed a requirement for the applicant to submit a CONOPS describing the UAS and identifying the intended operational concepts. The FAA explained in the preamble of the notice of proposed airworthiness criteria that the information in the CONOPS would determine parameters for testing and flight manual operating limitations.

Comment Summary: One commenter stated that the airworthiness criteria are generic and requested the FAA add language to proposed UAS.001 to clarify that some of the criteria may not be relevant or necessary.

FAA Response: Including the language requested by the commenter would be inappropriate, as these airworthiness criteria are project-specific. Thus, in this case, each element of these airworthiness criteria is a requirement specific to the type certification of Amazon's proposed UA design.

Comment Summary: ALPA requested the criteria specify that the applicant's CONOPS contain sufficient detail to determine the parameters and extent of testing, as well as operating limitations placed on the UAS for its operational uses.

FAA Response: The FAA agrees and has updated D&R.001 to clarify that the information required for inclusion in the CONOPS proposal (D&R.001(a) through (g)), must be described in sufficient detail to determine the parameters and extent of testing and operating limitations.

Comment Summary: ALPA requested the CONOPS include a description of a means to ensure separation from other aircraft and perform collision avoidance maneuvers. ALPA stated that its requested addition to the CONOPS is critical to the safety of other airspace users, as manned aircraft do not easily see most UAs.

FAA Response: The FAA agrees and has updated D&R.001 to require that the applicant identify collision avoidance equipment (whether onboard the UA or part of the AE), if the applicant requests to include that equipment.

Comment Summary: ALPA requested the FAA add security-related (other than cyber-security) requirements to the CONOPS criteria, including mandatory reporting of security occurrences, security training and awareness programs for all personnel involved in UAS operations, and security standards

for the transportation of goods, similar to those for manned aviation.

FAA Response: The type certificate only establishes the approved design of the UA. Operations and operational requirements, including those regarding security occurrences, security training, and package delivery security standards (other than cybersecurity airworthiness design requirements) are beyond the scope of the airworthiness criteria established by this document and are not required for type certification.

Comment Summary: UAS.001(c) proposed to require that the applicant's CONOPS include a description of meteorological conditions. ALPA requested the FAA change UAS.001(c) to require a description of meteorological and environmental conditions and their operational limits. ALPA stated the CONOPS should include maximum wind speeds, maximum or minimum temperatures, maximum density altitudes, and other relevant phenomena that will limit operations or cause operations to terminate.

FAA Response: D&R.001(c) and D&R.125 address meteorological conditions, while D&R.001(g) addresses environmental considerations. The FAA determined that these criteria are sufficient to cover the weather phenomena mentioned by the commenter without specifically requiring identification of related operational limits.

Control Station

To address the risks associated with loss of control of the UA, the FAA proposed that the applicant design the control station to provide the pilot with all information necessary for continued safe flight and operation.

Comment Summary: ALPA, Embry-Riddle Aeronautical University, and two individual commenters requested the FAA revise the proposed criteria to add requirements for the control station. Specifically, these commenters requested the FAA include the display of data and alert conditions to the pilot, physical security requirements for both the control station and the UAS storage area, design requirements that minimize negative impact of extended periods of low pilot workload, transfer of control between pilots, and human factors/human machine interface considerations for handheld controls. NUAIR requested the FAA designate the control station as a flight critical component for operations.

EASA and an individual commenter requested the FAA consider flexibility in some of the proposed criteria. EASA stated that the list of information in proposed UAS.100 is too prescriptive and contains information that may not be relevant for highly automated systems. The individual commenter requested that the FAA allow part-time or non-continuous displays of required information that do not influence the safety of the flight.

FAA Response: Although the scope of the proposed airworthiness criteria applied to the entire UAS, the FAA has re-evaluated its approach to type certification of low-risk unmanned aircraft using durability and reliability testing. A UA is an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.[2] A UAS is defined as a UA and its AE, including communication links and the components that control the UA, that are required to operate the UAS safely and efficiently in the national airspace system.[3] As explained in FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA determined it will apply the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance to only the UA and not to the AE. However, because safe UAS operations depend and rely on both the UA and the AE, the FAA will consider the AE in assessing whether the UA meets the airworthiness criteria that comprise the certification basis.

While the AE items themselves will be outside the scope of the UA type design, the applicant will provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, or a combination of these). In accordance with this approach, the FAA will consider the entirety of the UAS for operational approval and oversight.

Accordingly, the FAA has revised the criteria by replacing proposed section UAS.100, applicable to the control station design, with D&R.100, UA Signal Monitoring and Transmission, with substantively similar criteria that apply to the UA design. The FAA has also added a new section, D&R.105, UAS AE Required for Safe UA Operations, which requires the applicant to provide information concerning the specifications of the AE. The FAA has moved the alert function requirement proposed in UAS.100(a) to new section D&R.105(a)(1)(i). As part of the clarification of the testing of the interaction between the UA and AE, the FAA has added a requirement to D&R.300(h) for D&R testing to use minimum specification AE. This addition requires the applicant to demonstrate that the limits proposed for those AE will allow the UA to operate as expected throughout its service life. Finally, the FAA has revised references throughout the airworthiness criteria from ''UAS'' to ''UA,'' as appropriate, to reflect the FAA determination that the regulations for type design approval, production approval, conformity, certificates of airworthiness, and maintenance apply to only the UA.

Software

The FAA proposed criteria on verification, configuration management, and problem reporting to minimize the existence of errors associated with UAS software.

Comment Summary: ALPA requested the FAA add language to the proposed criteria to ensure that some level of software engineering principles are used without being too prescriptive.

FAA Response: By combining the software-testing requirement of D&R.110(a) with successful completion of the requirements in the entire ''Testing'' subpart, the acceptable level of software assurance will be identified and demonstrated. The configuration management system required by D&R.110(b) will ensure that the software is adequately documented and traceable both during and after the initial type certification activities.

Comment Summary: EASA suggested the criteria require that the applicant establish and correctly implement system requirements or a structured software development process for critical software.

FAA Response: Direct and specific evaluation of the software development process is more detailed than what the FAA intended with the proposed criteria, which use D&R testing to evaluate the UAS as a whole system, rather than evaluating individual components within the UA. Successful completion of the testing requirements provides confidence that the components that make up the UA provide an acceptable level of safety, commensurate to the low-risk nature of this aircraft. The FAA finds no change to the airworthiness criteria is needed.

[2] See 49 U.S.C. 44801(11).

[3] See 49 U.S.C. 44801(12).

Comment Summary: Two individual commenters requested the FAA require the manned aircraft software certification methodology in RTCA DO–178C, *Software Considerations in Airborne Systems and Equipment Certification,* for critical UA software.

FAA Response: Under these airworthiness criteria, only software that may affect the safe operation of the UA must be verified by test. To verify by test, the applicant will need to provide an assessment showing that other software is not subject to testing because it has no impact on the safe operation of the UA. For software that is subject to testing, the FAA may accept multiple options for software qualification, including DO–178C. Further, specifying that applicants must comply with DO–178 would be inconsistent with the FAA's intent to issue performance-based airworthiness criteria.

Comment Summary: NAAA stated that an overreliance of software in aircraft has been and continues to be a source of accidents and requested the FAA include criteria to prevent a midair collision.

FAA Response: The proper functioning of software is an important element of type certification, particularly with respect to flight controls and navigation. The airworthiness criteria in D&R.110 are meant to provide an acceptable level of safety commensurate with the risk posed by this UA. Additionally, the airworthiness criteria require contingency planning per D&R.120 and the demonstration of the UA's ability to detect and avoid other aircraft in D&R.310, if requested by the applicant. The risk of a midair collision will be minimized by the operating limitations that result from testing based on the operational parameters identified by the applicant in its CONOPS (such as geographic operating boundaries, airspace classes, and congestion of the proposed operating area), rather than by specific mitigations built into the aircraft design itself. These criteria are sufficient due to the low-risk nature of the Model MK27–2.

Cybersecurity

Because the UA requires a continuous wireless connection, the FAA proposed criteria to address the risks to the UAS from cybersecurity threats.

Comment Summary: ALPA and an individual commenter requested adding a requirement for cybersecurity protection, including protection from hacking, for navigation and position reporting systems such as Global Navigation Satellite System (GNSS). ALPA further requested the FAA include criteria to address specific cybersecurity vulnerabilities, such as jamming (denial of signal) and spoofing (false position data is inserted). ALPA stated that, for navigation, UAS primarily use GNSS—an unencrypted, open-source, low power transmission that can be jammed, spoofed, or otherwise manipulated.

FAA Response: The FAA will assess elements directly influencing the UA for cybersecurity under D&R.115 and will assess the AE as part of any operational approvals an operator may seek. D&R.115 (proposed as UAS.115), addresses intentional unauthorized electronic interactions, which includes, but is not limited to, hacking, jamming, and spoofing. These airworthiness criteria require the high-level outcome the UA must meet, rather than discretely identifying every aspect of cybersecurity the applicant will address.

Contingency Planning

The FAA proposed criteria requiring that the UAS be designed to automatically execute a predetermined action in the event of a loss of communication between the pilot and the UA. The FAA further proposed that the predetermined action be identified in the Flight Manual and that the UA be precluded from taking off when the quality of service is inadequate.

Comment Summary: ALPA and an individual commenter requested the criteria encompass more than loss or degradation of the command and control (C2) link, as numerous types of critical part or systems failures can occur that include degraded capabilities, whether intermittent or sustained. ALPA requested the FAA add language to the proposed criteria to address specific failures such as loss of a primary navigation sensor, degradation or loss of navigation capability, and simultaneous impact of C2 and navigation links. The individual commenter requested the FAA revise the proposed criteria to only require execution of the predetermined action in the event the loss of the C2 link exceeds 60 seconds, and suggested that the criteria as proposed would result in suitable drones aborting flights or being constantly redirected by the operator because of a brief C2 interruption.

FAA Response: The airworthiness criteria address the issues raised by commenters. Specifically, D&R.120(a) addresses actions the UA will automatically and immediately take when the operator no longer has control of the UA. Should the specific failures identified by ALPA result in the operator's loss of control, then the criteria require the UA to execute a predetermined action. Degraded navigation performance does not raise the same level of concern as a degraded or lost C2 link. For example, a UA may experience interference with a GPS signal on the ground, but then find acceptable signal strength when above a tree line or other obstruction. The airworthiness criteria require that neither degradation nor complete loss of GPS or C2, as either condition would be a failure of that system, result in unsafe loss of control or containment. The applicant must demonstrate this by test to meet the requirements of D&R.305(a)(3).

Under the airworthiness criteria, the minimum performance requirements for the C2 link, defining when the link is degraded to an unacceptable level, may vary among different UAS designs. The level of degradation that triggers a loss is dependent upon the specific UA characteristics; this level will be defined by the applicant and demonstrated to be acceptable by testing as required by D&R.305(a)(2) and D&R.310(a)(1).

Comment Summary: An individual commenter requested the FAA use distinct terminology for ''communication'' used for communications with air traffic control, and ''C2 link'' used for command and control between the remote pilot station and UA. The commenter questioned whether, in the proposed criteria, the FAA stated ''loss of communication between the pilot and the UA'' when it intended to state ''loss of C2 link.''

FAA Response: Communication extends beyond the C2 link and specific control inputs. This is why D&R.001 requires the applicant's CONOPS to include a description of the command, control, and communications functions. As long as the UA operates safely and predictably per its lost link contingency programming logic, a C2 interruption does not constitute a loss of control.

Lightning

The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the Flight Manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

Comment Summary: An individual requested the FAA revise the criteria to include a similar design mitigation or operating limitation for High Intensity Radiated Fields (HIRF). The commenter noted that HIRF is included in proposed UAS.300(e) as part of the expected

environmental conditions that must be replicated in testing.

FAA Response: The airworthiness criteria, which are adopted as proposed, address the issue raised by the commenter. The applicant must identify tested HIRF exposure capabilities, if any, in the Flight Manual to comply with the criteria in D&R.200(a)(5). Information regarding HIRF capabilities is necessary for safe operation because proper communication and software execution may be impeded by HIRF-generated interference, which could result in loss of control of the UA. It is not feasible to measure HIRF at every potential location where the UA will operate; thus, requiring operating limitations for HIRF as requested by the commenter would be impractical.

Adverse Weather Conditions

The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

Comment Summary: ALPA and three individual commenters requested the FAA expand the proposed definition of adverse weather conditions. These commenters noted that because of the size and physical limitations of the Model MK27–2, adverse weather should also include wind, downdraft, low-level wind shear (LLWS), microburst, and extreme mechanical turbulence.

FAA Response: No additional language needs to be added to the airworthiness criteria to address wind effects. The wind conditions specified by the commenters are part of normal UA flight operations. The applicant must demonstrate by flight test that the UA can withstand wind without failure to meet the requirements of D&R.300(b)(9). The FAA developed the criteria in D&R.130 to address adverse weather conditions (rain, snow, and icing) that would require additional design characteristics for safe operation. Any operating limitations necessary for operation in adverse weather or wind conditions will be included in the Flight Manual as required by D&R.200.

Comment Summary: One commenter questioned whether the criteria proposed in UAS.130(c)(2), requiring a means to detect adverse weather conditions for which the UAS is not certificated to operate, is a prescriptive requirement to install an onboard detection system. The commenter requested, if that was the case, that the FAA allow alternative procedures to avoid flying in adverse weather conditions.

FAA Response: The language referred to by the commenter is not a prescriptive design requirement for an onboard detection system. The applicant may use any acceptable source to monitor weather in the area, whether onboard the UA or from an external source.

Comment Summary: One commenter stated that flying in adverse weather would create significant problems when delivering cargo because wind, rain, and gust fronts can divert a drone from its intended path. The commenter further stated that the size of the Amazon Model MK27–2 (78 inches in width) can be dangerous to buildings, animals, vehicles, and people.

FAA Response: Operators will need an air carrier certificate to conduct cargo delivery operations. As part of the approval for the air carrier certificate, as well as any other operational approval the operator may seek (*i.e.,* waivers, exemptions), the FAA will impose any additional appropriate limitations.

Critical Parts

The FAA proposed criteria for critical parts that were substantively the same as those in the existing standards for normal category rotorcraft under § 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

Comment Summary: EASA requested the FAA avoid using the term ''critical part,'' as it is a well-established term for complex manned aircraft categories and may create incorrect expectations on the oversight process for parts.

FAA Response: For purposes of the airworthiness criteria established for the Amazon Model MK27–2, the FAA has changed the term ''critical part'' to ''flight essential part.''

Comment Summary: An individual commenter requested the FAA revise the proposed criteria such that a failure of a flight essential part would only occur if there is risk to third parties.

FAA Response: The definition of ''flight essential'' does not change regardless of whether on-board systems are capable of safely landing the UA when it is unable to continue its flight plan. Tying the definition of a flight essential part to the risk to third parties would result in different definitions for the part depending on where and how the UA is operated. These criteria for the Model MK27–2 UA apply the same approach as for manned aircraft.

Flight Manual

The FAA proposed criteria for the Flight Manual that were substantively the same as the existing standards for normal category airplanes, with minor changes to reflect UAS terminology.

Comment Summary: ALPA requested the FAA revise the criteria to include normal, abnormal, and emergency operating procedures along with their respective checklist. ALPA further requested the checklist be contained in a quick reference handbook (QRH).

FAA Response: The FAA did not intend for the airworthiness criteria to exclude abnormal procedures from the flight manual. In these final airworthiness criteria, the FAA has changed ''normal and emergency operating procedures'' to ''operating procedures'' to encompass all operating conditions and align with 14 CFR 23.2620, which includes the airplane flight manual requirements for normal category airplanes. The FAA has not made any changes to add language that would require the checklists to be included in a QRH. FAA regulations do not require manned aircraft to have a QRH for type certification. Therefore, it would be inconsistent for the FAA to require a QRH for the Amazon Model MK27–2 UA.

Comment Summary: ALPA requested the FAA revise the airworthiness criteria to require that the Flight Manual and QRH be readily available to the pilot at the control station.

FAA Response: ALPA's request regarding the Flight manual addresses an operational requirement, similar to 14 CFR 91.9 and is therefore not appropriate for type certification airworthiness criteria. Also, as previously discussed, FAA regulations do not require a QRH. Therefore, it would be inappropriate to require it to be readily available to the pilot at the control station.

Comment Summary: Droneport Texas LLC requested the FAA revise the airworthiness criteria to add required Flight Manual sections for routine maintenance and mission-specific equipment and procedures. The commenter stated that the remote pilot or personnel on the remote pilot-in-command's flight team accomplish most routine maintenance, and that the flight team usually does UA rigging with mission equipment.

FAA Response: The requested change is appropriate for a maintenance document rather than a flight manual because it addresses maintenance procedures rather than the piloting functions. The FAA also notes that, similar to the criteria for certain manned

aircraft, the airworthiness criteria require that the applicant prepare instructions for continued airworthiness (ICA) in accordance with Appendix A to Part 23. As the applicant must provide any maintenance instructions and mission-specific information necessary for safe operation and continued operational safety of the UA, in accordance with D&R.205, no changes to the airworthiness criteria are necessary.

Comment Summary: An individual commenter requested the FAA revise the criteria in proposed UAS.200(b) to require that ''other information'' referred to in proposed UAS.200(a)(5) be approved by the FAA. The commenter noted that, as proposed, only the information listed in UAS.200(a)(1) through (4) must be FAA approved.

FAA Response: The change requested by the commenter would be inconsistent with the FAA's airworthiness standards for flight manuals for manned aircraft. Sections 23.2620(b), 25.1581(b), 27.1581(b), and 29.1581(b)) include requirements for flight manuals to include operating limitations, operating procedures, performance information, loading information, and other information that is necessary safe operation because of design, operating, or handling characteristics, but limit FAA approval to operating limitations, operating procedures, performance information, and loading information.

Under § 23.2620(b)(1), for low-speed level 1 and level 2 airplanes, the FAA only approves the operating limitations. In applying a risk-based approach, the FAA has determined it would not be appropriate to hold the lowest risk UA to a higher standard than what is required for low speed level 1 and level 2 manned aircraft. Accordingly, the FAA has revised the airworthiness criteria to only require FAA approval of the operating limitations.

Comment Summary: NUAIR requested the FAA recognize that § 23.2620 is only applicable to the aircraft and does not address off-aircraft components such as the control station, control and non-payload communications (CNPC) data link, and launch and recovery equipment. The commenter noted that this is also true of industry consensus-based standards designed to comply with § 23.2620.

FAA Response: As explained in more detail in the Control Station section of this document, the FAA has revised the airworthiness criteria for the AE. The FAA will approve AE or minimum specifications for the AE that could affect airworthiness as an operating limitation in the UA flight manual. The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual in accordance with D&R.105(c). The establishment of requirements for, and the approval of AE will be in accordance with FAA Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021.

Instructions for Continued Airworthiness (ICA)

The FAA proposed criteria for ICA that were substantively the same as those in the existing standards for normal category airplanes, with minor changes to reflect UA terminology instead of airplane terminology.

Comment Summary: One individual commenter requested the airworthiness criteria contain maintenance, repair, and overhaul standards for the continued safe operation of the UAS after type certification. Specifically, the commenter suggested a maintenance program, maintenance record, maintenance manual, minimum equipment list, illustrated parts catalog, service bulletin, parts manufacturer approval, technical standard order, airworthiness directive, and technician qualification approval systems for each type of commercial UAS. Another individual commenter requested information on the expected lifespan of the Model MK27–2 and any continued airworthiness checks it will undergo, expecting a higher level of safety than for UA flown under part 107. A third individual commenter requested information on the type of pre-flight and post-flight inspections that will be performed and questioned the number of pilots and technicians needed.

FAA Response: The airworthiness criteria pertaining to ICA (D&R.205), which are adopted as proposed, require that the applicant prepare ICA in accordance with Appendix A to Part 23, similar to manned aircraft. Appendix A to Part 23 requires maintenance servicing information, instructions, inspection and overhaul periods, and other continued airworthiness information, such as that suggested by the commenters. The FAA will not provide the expected lifespan of the Model MK27–2 or the specific inspections required, as this information is proprietary to the applicant.

Durability and Reliability

The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that the unmanned aircraft would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

Comment Summary: ALPA requested that the proposed certification criteria require all flights during testing be completed in both normal and non-normal or off-nominal scenarios with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone. Specifically, ALPA stated that testing must not require exceptional piloting skill or alertness and include, at a minimum: All phases of the flight envelope, including the highest UA to pilot ratios; the most adverse combinations of the conditions and configuration; the environmental conditions identified in the CONOPS; the different flight profiles and routes identified in the CONOPS; and exposure to EMI and HIRF.

FAA Response: No change is necessary because the introductory text and paragraphs (b)(7), (b)(9), (b)(10), (b)(13), (c), (d), (e), and (f) of D&R.300, which are adopted as proposed, contain the specific testing requirements requested by ALPA.

Comment Summary: Droneport Texas LLC requested the FAA revise the testing criteria to include, for operation at night, testing both with and without night vision aids. The commenter stated that because small UAS operation at night is waivable under 14 CFR part 107, manufacturers will likely make assumptions concerning a pilot's familiarity with night vision device-aided and unaided operations.

FAA Response: Under D&R.300(b)(11), the applicant must demonstrate by flight test that the UA can operate at night without failure using whatever equipment is onboard the UA itself. The pilot's familiarity, or lack thereof, with night vision equipment does not impact whether the UA is reliable and durable to complete testing without any failures. The FAA further notes that part 107 does not apply to this aircraft because it has a maximum gross takeoff weight of 89 pounds.

Comment Summary: EASA requested the FAA clarify how testing durability and reliability commensurate to the maximum population density, as proposed, aligns with the Specific

Operations Risk Assessment (SORA) approach that is open to operational mitigation, reducing the initial ground risk. An individual commenter requested the FAA provide more details about the correlation between the number of flight hours tested and the CONOPS environment (*e.g.,* population density). The commenter stated that this is one of the most fundamental requirements, and the FAA should ensure equal treatment to all current and future applicants.

FAA Response: In developing these testing criteria, the FAA sought to align the risk of UAS operations with the appropriate level of protection for human beings on the ground. The FAA proposed establishing the maximum population density demonstrated by durability and reliability testing as an operating limitation on the type certificate. However, the FAA has re-evaluated its approach and determined it to be more appropriate to connect the durability and reliability demonstrated during certification testing with the operating environment defined in the CONOPS.

Basing testing on maximum population density may result in limitations not commensurate with many actual operations. As population density broadly refers to the number of people living in a given area per square mile, it does not allow for evaluating variation in a local operating environment. For example, an operator may have a route in an urban environment with the actual flight path along a greenway; the number of human beings exposed to risk from the UA operating overhead would be significantly lower than the population density for the area. Conversely, an operator may have a route over an industrial area where few people live, but where, during business hours, there may be highly dense groups of people. Specific performance characteristics such as altitude and airspeed also factor into defining the boundaries for safe operation of the UA.

Accordingly, the FAA has revised D&R.300 to require the UA design to be durable and reliable when operated under the limitations prescribed for its operating environment. The information in the applicant's CONOPS will determine the operating environment for testing. For example, the minimum hours of reliability testing will be less for a UA conducting agricultural operations in a rural environment than if the same aircraft will be conducting package deliveries in an urban environment. The FAA will include the limitations that result from testing as operating limitations on the type certificate data sheet and in the UA Flight Manual. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. This allows for added flexibility in determining appropriate operating limitations, which will more closely reflect the operating environment.

Finally, a comparison of these criteria with EASA's SORA approach is beyond the scope of this document because the SORA is intended to result in an operational approval rather than a type certificate.

Comment Summary: EASA requested the FAA clarify how reliability at the aircraft level to ensure high-level safety objectives would enable validation of products under applicable bilateral agreements.

FAA Response: As the FAA and international aviation authorities are still developing general airworthiness standards for UA, it would be speculative for the FAA to comment on the validation process for any specific UA.

Comment Summary: EASA requested the FAA revise the testing criteria to include a compliance demonstration related to adverse combinations of the conditions and configurations and with respect to weather conditions and average pilot qualification.

FAA Response: No change is necessary because D&R.300(b)(7), (b)(9), (b)(10), (c), and (f), which are adopted as proposed, contain the specific testing requirements requested by EASA.

Comment Summary: EASA noted that, under the proposed criteria, testing involving a large number of flight hours will limit changes to the configuration.

FAA Response: Like manned aircraft, the requirements of 14 CFR part 21, subpart D, apply to UA for changes to type certificates. The FAA is developing procedures for processing type design changes for UA type certificated using durability and reliability testing.

Comment Summary: EASA requested the FAA clarify whether the proposed testing criteria would require the applicant to demonstrate aspects that do not occur during a successful flight, such as the deployment of emergency recovery systems and fire protection/post-crash fire. EASA asked if these aspects are addressed by other means and what would be the applicable airworthiness criteria.

FAA Response: Equipment not required for normal operation of the UA do not require an evaluation for their specific functionality. D&R testing will show that the inclusion of any such equipment does not prevent normal operation. Therefore, the airworthiness criteria would not require functional testing of the systems described by EASA.

Comment Summary: An individual commenter requested the FAA specify the acceptable percentage of failures in the testing that would result in a ''loss of flight.'' The Small UAV Coalition requested the FAA clarify what constitutes an emergency landing outside an operator's landing area, as some UAS designs could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. The commenter suggested that, in those cases, a landing in a safe location should not invalidate the test.

FAA Response: The airworthiness criteria require that all test points and flight hours occur with no failures result in a loss of flight, control, containment, or emergency landing outside the operator's recovery zone. The FAA has determined that there is no acceptable percentage of failures in testing. In addition, while the recovery zone may differ for each UAS design, an emergency or unplanned landing outside of a designated landing area would result in a test failure.

Comment Summary: The Small UAV Coalition requested that a single failure during testing not automatically restart counting the number of flight test operations set for a particular population density; rather, the applicant should have the option to identify the failure through root-cause and fault-tree analysis and provide a validated mitigation to ensure it will not recur. An individual commenter requested the FAA to clarify whether the purpose of the tests is to show compliance with a quantitative safety objective. The commenter further requested the FAA allow the applicant to reduce the number of flight testing hours if the applicant can present a predicted safety and reliability analysis.

FAA Response: The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing hours. The FAA does not intend to require analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using a means of compliance, accepted by the FAA, through the issue paper process. The means of compliance will be dependent on the CONOPS the applicant has proposed to meet.

Probable Failures

The FAA proposed criteria to evaluate how the UAS functions after probable

failures, including failures related to propulsion systems, C2 link, GPS, critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

Comment Summary: Droneport Texas LLC requested the FAA add a bird strike to the list of probable failures. The commenter stated that despite sense and avoid technologies, flocks of birds can overcome the maneuver capabilities of a UA and result in multiple, unintended failures.

FAA Response: Unlike manned aircraft, where aircraft size, design, and construct are critical to safe control of the aircraft after encountering a bird strike, the FAA determined testing for bird strike capabilities is not necessary for the Model MK27–2 UA. The FAA has determined that a bird strike requirement is not necessary because the smaller size and lower operational speed of the MK27–2 reduce the likelihood of a bird strike, combined with the reduced consequences of failure due to no persons onboard. Instead, the FAA is using a risk-based approach to tailor airworthiness requirements commensurate to the low-risk nature of the Model MK27–2 UA.

Comment Summary: ALPA requested the FAA require that all probable failure tests occur at the critical phase and mode of flight and at the highest aircraft-to-pilot ratio. ALPA stated the proposed criteria are critically important for systems that rely on a single source to perform multi-label functions, such as GNSS, because failure or interruption of GNSS will lead to loss of positioning, navigation, and timing (PNT) and functions solely dependent on PNT, such as geo-fencing and contingency planning.

FAA Response: No change is necessary because D&R.300(c) requires that the testing occur at the critical phase and mode of flight and at the highest UA-to-pilot ratio.

Comment Summary: Droneport Texas LLC requested the FAA add recovery from vortex ring state (VRS) to the list of probable failures. The commenter stated the UA uses multiple rotors for lift and is therefore susceptible to VRS. The commenter further stated that because recovery from settling with power is beyond a pilot's average skill for purposes of airworthiness testing, the aircraft must be able to sense and recover from this condition without pilot assistance.

FAA Response: D&R.305 addresses probable failures related to specific components of the UAS. VRS is an aerodynamic condition a UA may encounter during flight testing; it is not a component subject to failure.

Comment Summary: Droneport Texas LLC also requested the FAA add a response to the Air Traffic Control-Zero (ATC-Zero) command to the list of probable failures. The commenter stated, based on lessons learned after the attacks on September 11, 2001, aircraft that can fly BVLOS should be able to respond to an ATC-Zero condition.

FAA Response: The commenter's request is more appropriate for the capabilities and functions testing criteria in D&R.310 than probable failures testing in D&R.305. D&R.310(a)(3) requires the applicant to demonstrate by test that the pilot has the ability to safely discontinue a flight. A pilot may discontinue a flight for a wide variety of reasons, including responding to an ATC-zero command.

Comment Summary: EASA stated the proposed language seems to require an additional analysis and safety assessment, which would be appropriate for the objective requirement of ensuring a probable failure does not result in a loss of containment or control. EASA further stated that an applicant's basic understanding of the systems architecture and effects of failures is essential.

FAA Response: The FAA agrees with the expectation that applicants understand the system architecture and effects of failures of a proposed design, which is why the criteria include a requirement for the applicant to test the specific equipment identified in D&R.305 and identify any other equipment that is not specifically identified in D&R.305 for testing. As the intent of the criteria is for the applicant to demonstrate compliance through testing, some analysis may be necessary to properly identify the appropriate equipment to be evaluated for probable failures.

Comment Summary: An individual requested that probable failure testing apply not only to critical flight control components with a single point of failure, but also to any critical part with a single point of failure.

FAA Response: The purpose of probable failure testing in D&R.305 is to demonstrate that if certain equipment fails, it will fail safely. Adding probable failure testing for critical (now flight essential) parts would not add value to testing. If a part is essential for flight, its failure by definition in D&R.135(a) could result in a loss of flight or unrecoverable loss of control. For example, on a traditional airplane design, failure of a wing spar in flight would lead to loss of the aircraft. Because there is no way to show that a wing spar can fail safely, the applicant must provide its mandatory replacement time if applicable, structural inspection interval, and related structural inspection procedure in the Airworthiness Limitations section of the ICA. Similarly, under these airworthiness criteria, parts whose failure would inherently result in loss of flight or unrecoverable loss of control are not subjected to probable failure testing. Instead, they must be identified as flight essential components and included in the ICA.

To avoid confusion pertaining to probable failure testing, the FAA has removed the word ''critical'' from D&R.305(a)(5). In the final airworthiness criteria, probable failure testing required by D&R.305(a)(5) applies to ''Flight control components with a single point of failure.''

Capabilities and Functions

The FAA proposed criteria to require the applicant to demonstrate by test the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate by test, the capability of the UAS to regain command and control of the UA after a C2 link loss, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate by test certain features if the applicant requests approval of those features (geo-fencing, external cargo, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

Comment Summary: ALPA stated the pilot-in-command must always have the capability to input control changes to the UA and override any pre-programming without delay as needed for the safe management of the flight. The commenter requested that the FAA retain the proposed criteria that would allow the pilot to command to: regain command and control of the UA after loss of the C2 link; safely discontinue the flight; and dynamically re-route the UA. In support, ALPA stated the ability of the pilot to continually command (re-route) the UA, including termination of the flight if necessary, is critical for safe operations and should always be available to the pilot.

Honeywell requested the FAA revise paragraphs (a)(3) and (a)(4) of the

criteria (UAS.310) to allow for either the pilot or an augmenting system to safely discontinue the flight and re-route the UA. The commenter stated that a system comprised of detect and avoid, onboard autonomy, and ground system can be used for these functions. Therefore, the criteria should not require that only the pilot can do them.

An individual commenter requested the FAA remove UAS.310(a)(4) of the proposed criteria because requiring the ability for the pilot to dynamically re-route the UA is too prescriptive and redundant with the proposed requirement in UAS.310(a)(3), the ability of the pilot to discontinue the flight safely.

FAA Response: Because the pilot in command is directly responsible for the operation of the UA, the pilot must have the capability to command actions necessary for continued safety. This includes commanding a change to the flight path or, when appropriate, safely terminating a flight. The FAA notes that the ability for the pilot to safely discontinue a flight means the pilot has the means to terminate the flight and immediately and safely return the UA to the ground. This is different from the pilot having the means to dynamically re-route the UA, without terminating the flight, to avoid a conflict.

Therefore, the final airworthiness criteria includes D&R.310(a) as proposed (UAS.310(a)).

Comment Summary: ALPA requested the FAA revise the criteria to require that all equipment, systems, and installations conform, at a minimum, to the standards of § 25.1309.

FAA Response: The FAA determined that traditional methodologies for manned aircraft, including the system safety analysis required by §§ 23.2510, 25.1309, 27.1309, or 29.1309, would be inappropriate to require for the Amazon Model MK27–2 due to its smaller size and reduced level of complexity. Instead, the FAA finds that system reliability through testing will ensure the safety of this design.

Comment Summary: ALPA requested the FAA revise the criteria to add a requirement to demonstrate the ability of the UA and pilot to perform all of the contingency plans identified in proposed UAS.120.

FAA Response: No change is necessary because D&R.120 and D&R.305(a)(2), together, require what ALPA requests in its comment. Under D&R.120, the applicant must design the UA to execute a predetermined action in the event of a loss of the C2 link. D&R.305(a)(2) requires the applicant to demonstrate by test that a lost C2 link will not result in a loss of containment or control of the UA. Thus, if the applicant does not demonstrate the predetermined contingency plan resulting from a loss of the C2 link when conducting D&R.305 testing, the test would be a failure due to loss of containment.

Comment Summary: ALPA and an individual commenter requested the FAA revise the criteria so that geo-fencing is a required feature and not optional due to the safety concerns that could result from a UA exiting its operating area.

FAA Response: To ensure safe flight, the applicant must test the proposed safety functions, such as geo-fencing, that are part of the type design of the Model MK27–2 UA. The FAA determined that geo-fencing is an optional feature because it is one way, but not the only way, to ensure a safely contained operation.

Comment Summary: ALPA requested the FAA revise the criteria so that capability to detect and avoid other aircraft and obstacles is a required feature and not optional.

FAA Response: D&R.310(a)(4) requires the applicant demonstrate the ability for the pilot to safely re-route the UA in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features such as a collision avoidance system to meet D&R.310(a)(4) because there are multiple means to minimize the risk of collision.

Comment Summary: McMahon Helicopter Services requested that the airworthiness criteria require a demonstration of sense-and-avoid technology that will automatically steer the UA away from manned aircraft, regardless of whether the manned aircraft has a transponder. NAAA and an individual commenter requested that the FAA require ADS–B in/out and traffic avoidance software on all UAS. The Small UAV Coalition requested the FAA establish standards for collision avoidance technology, as the proposed criteria are not sufficient for compliance with the operational requirement to see and avoid other aircraft (§ 91.113). The commenters stated that these technologies are necessary to avoid a mid-air collision between UA and manned aircraft.

FAA Response: D&R.310(a)(4) requires the applicant demonstrate the ability for the UA to be safely re-routed in flight to avoid a dynamic hazard. The FAA did not prescribe specific design features, such as the technologies suggested by the commenters, to meet D&R.310(a)(4) because they are not the only means for complying with the operational requirement to see and avoid other aircraft. If an applicant chooses to equip their UA with onboard collision avoidance technology, those capabilities and functions must be demonstrated by test per D&R.310(b)(5).

Verification of Limits

The FAA proposed to require an evaluation of the UA's performance, maneuverability, stability, and control with a factor of safety.

Comment Summary: EASA requested that the FAA revise its approach to require a similar compliance demonstration as EASA's for ''light UAS.'' EASA stated the FAA's proposed criteria for verification of limits, combined with the proposed Flight Manual requirements, seem to replace a traditional Subpart Flight.[4] EASA further stated the FAA's approach in the proposed airworthiness criteria might necessitate more guidance and means of compliance than the traditional structure.

FAA Response: The FAA's airworthiness criteria will vary from EASA's light UAS certification requirements, resulting in associated differences in compliance demonstrations. At this time, comment on means of compliance and related guidance material, which are still under development with the FAA and with EASA, would be speculative.

Propulsion

Comment Summary: ALPA requested the FAA conduct an analysis to determine battery reliability and safety, taking into account wind and weather conditions and their effect on battery life. ALPA expressed concern with batteries as the only source of power for an aircraft in the NAS. ALPA further requested the FAA not grant exemptions for battery reserve requirements.

FAA Response: Because batteries are a flight essential part, the applicant must establish mandatory instructions or life limits for batteries under the requirements of D&R.135. In addition, when the applicant conducts its D&R testing, D&R.300(i) prevents the applicant from exceeding the maintenance intervals or life limits for those batteries. To the extent the commenter's request addresses fuel reserves, that is an operational requirement, not a certification requirement, and therefore beyond the scope of this document.

Comment Summary: Sabrewing Aircraft Company requested the FAA clarify whether the proposed airworthiness criteria address the

[4] In the FAA's aircraft airworthiness standards (parts 23, 25, 27 and 29), subpart B of each is titled Flight.

propulsion system or whether that will be covered in a different process. The commenter noted that the proposed airworthiness criteria did not mention aircraft engines, propellers, or other components of an electric power propulsion system.

FAA Response: Under these airworthiness criteria, the UA type certificate will include the propulsion system. The FAA will evaluate the UA at the aircraft level, without differentiating requirements for each subsystem of the UA, such as powerplant and propulsion elements. Under D&R.305(a)(1), the applicant must demonstrate that loss of a propulsion unit will not result in a loss of containment or control of the UA.

Additional Airworthiness Criteria Identified by Commenters

Comment Summary: McMahon Helicopter Services requested that the criteria require anti-collision and navigation lighting certified to existing FAA standards for brightness and size. The commenter stated that these standards were based on human factors for nighttime and daytime recognition and are not simply a lighting requirement. An individual commenter requested that the criteria include a requirement for position lighting and anti-collision beacons meeting TSO–30c Level III. NAAA requested the criteria require a strobe light and high visibility paint scheme to aid in visual detection of the UA by other aircraft.

FAA Response: The FAA determined it is unnecessary for these airworthiness criteria to prescribe specific design features for anti-collision or navigation lighting. The FAA will address anti-collision lighting as part of any operational approval, similar to the rules in 14 CFR 107.29(a)(2) and (b) for small UAS.

Comment Summary: ALPA requested the FAA add a new section with minimum standards for Global Navigation Satellite System (GNSS), as the UAS will likely rely heavily upon GNSS for navigation and to ensure that the UA does not stray outside of its approved airspace. ALPA stated that technological advances have made such devices available at an appropriate size, weight, and power for UAs.

FAA Response: The airworthiness criteria in D&R.100 (UA Signal Monitoring and Transmission), D&R.110 (Software), D&R.115 (Cybersecurity), and D&R.305(a)(3) (probable failures related to GPS) sufficiently address design requirements and testing of navigation systems. Even if the applicant uses a TSO-approved GNSS, these airworthiness criteria require a demonstration that the UA operates successfully without loss of containment. Successful completion of these tests demonstrates that the navigation subsystems are acceptable.

Comment Summary: ALPA requested the FAA revise the criteria to add a new section requiring equipage to comply with the FAA's new rules on Remote Identification of Unmanned Aircraft (86 FR 4390, Jan. 15, 2021). An individual commenter questioned the need for public tracking and identification of drones in the event of a crash or violation of FAA flight rules.

FAA Response: The FAA issued the final rule, Remote Identification of Unmanned Aircraft, after providing an opportunity for public notice and comment. The final rule is codified at 14 CFR part 89. Part 89 contains the remote identification requirements for unmanned aircraft certificated and produced under part 21 after September 16, 2022.

Pilot Ratio

Comment Summary: ALPA and four individuals questioned the safety of multiple Model MK27–2 UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. ALPA stated that even with high levels of automation, the pilot must still manage the safe operation and maintain situational awareness of multiple aircraft in their flight path, aircraft systems, integration with traffic, obstacles, and other hazards during normal, abnormal, and emergency conditions. As a result, ALPA recommended the FAA conduct additional studies to better understand the feasibility of a single pilot operating multiple UA before developing airworthiness criteria. The Small UAV Coalition requested the FAA provide criteria for an aircraft-to-pilot ratio higher than 20:1.

FAA Response: These airworthiness criteria are specific to the Model MK27–2 UA and, as discussed previously in this preamble, operations of the Model MK27–2 UA may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Additionally, these airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. Should the pilot ratio cause a loss of containment or control of the UA, then the applicant will fail this testing.

Comment Summary: ALPA stated that to allow a UAS-pilot ratio of up to 20:1 safely, the possibility that the pilot will need to intervene with multiple UA simultaneously must be ''extremely remote.'' ALPA questioned whether this is feasible given the threat of GNSS interference or unanticipated wind gusts exceeding operational limits.

FAA Response: The FAA's guidance in AC 23.1309–1E, *System Safety Analysis and Assessment for Part 23 Airplanes* defines ''extremely remote failure conditions'' as failure conditions not anticipated to occur during the total life of an airplane, but which may occur a few times when considering the total operational life of all airplanes of the same type. When assessing the likelihood of a pilot needing to intervene with multiple UA simultaneously, the minimum reliability requirements will be determined based on the applicant's proposed CONOPS.

Noise

Comment Summary: Several commenters expressed concern about noise pollution and noise levels.

FAA Response: The Model MK27–2 will need to comply with FAA noise certification standards. If the FAA determines that 14 CFR part 36 does not contain adequate standards for this design, the agency will propose and seek public comment on a rule of particular applicability for noise requirements under a separate rulemaking docket.

Operating Altitude

Comment Summary: ALPA, McMahon Helicopter Services, NAAA, and an individual commented on the operation of UAS at or below 400 feet AGL. ALPA, McMahon Helicopter Services, and NAAA requested the airworthiness criteria contain measures for safe operation at low altitudes so that UAS are not a hazard to manned aircraft, especially operations involving helicopters; air tours; agricultural applications; emergency medical services; air tanker firefighting; power line and pipeline patrol and maintenance; fish and wildlife service; animal control; military and law enforcement; seismic operations; ranching and livestock relocation; and mapping. An individual commenter opposed allowing Amazon to fly cargo UA at less than 400 feet altitude over people because a stall, power surge or interruption, weather, or signal interference will endanger people on the ground.

An individual requested clarification concerning how Amazon's UAS can be exempt from the operational requirements in part 107, particularly when carrying property for

compensation or hire beyond visual line of sight. Another individual requested additional information about minimum altitudes and line of sight requirements.

FAA Response: The type certificate only establishes the approved design of the UA. These airworthiness criteria require the applicant show compliance for the UA altitude sought for type certification. While this may result in operating limitations in the flight manual, the type certificate is not an approval for operations. Operations and operational requirements are beyond the scope of this document.

Guidance Material

Comment Summary: NUAIR requested the FAA complete and publish its draft AC 21.17–XX, *Type Certification Basis for Unmanned Aircraft Systems (UAS),* to provide additional guidance, including templates, to those who seek a type design approval for UAS. NUAIR also requested the FAA recognize the industry consensus-based standards applicable to UAS, as Transport Canada has by publishing its AC 922–001, *Remotely Piloted Aircraft Systems Safety Assurance.*

FAA Response: The FAA will continue to develop policy and guidance for UA type certification and will publish guidance as soon as practicable. The FAA encourages consensus standards bodies to develop means of compliance and submit them to the FAA for acceptance. Regarding Transport Canada AC 922–001, that AC addresses operational approval rather than type certification.

Safety Management

Comment Summary: ALPA requested the FAA ensure that operations, including UA integrity, fall under the safety management system. ALPA further requested the FAA convene a Safety Risk Management Panel before allowing operators to commence operations and that the FAA require operators to have an active safety management system, including a non-punitive safety culture, where incident and continuing airworthiness issues can be reported.

FAA Response: The type certificate only establishes the approved design of the UA, including the Flight Manual and ICA. Operations and operational requirements, including safety management and oversight of operations and maintenance, are beyond the scope of this document.

Process

Comment Summary: ALPA supported the FAA's type certification of UAS as a ''special class'' of aircraft under § 21.17(b) but requested that it be temporary.

FAA Response: As the FAA stated in its notice of policy issued August 11, 2020 (85 FR 58251, September 18, 2020), the FAA will use the type certification process under § 21.17(b) for some unmanned aircraft with no occupants onboard. The FAA further stated in its policy that it may also issue type certificates under § 21.17(a) for airplane and rotorcraft UAS designs where the airworthiness standards in part 23, 25, 27, or 29, respectively, are appropriate. The FAA, in the future, may consider establishing appropriate generally applicable airworthiness standards for UA that are not certificated under the existing standards in parts 23, 25, 27, or 29.

Out of Scope Comments

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are beyond the scope of this document.

Applicability

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Amazon Model MK27–2 UA. Should Amazon wish to apply these airworthiness criteria to other UA models, it must submit a new type certification application.

Conclusion

This action affects only certain airworthiness criteria for the Amazon Model MK27–2 UA. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701–44702, 44704.

Airworthiness Criteria

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the Amazon Model MK27–2 unmanned aircraft. The FAA finds that compliance with these criteria appropriately mitigates the risks associated with the design and concept of operations and provides an equivalent level of safety to existing rules.

General

D&R.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

D&R.005 Definitions

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of Control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of Flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

Design and Construction

D&R.100 UA Signal Monitoring and Transmission

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

D&R.105 UAS AE Required for Safe UA Operations

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, pilot alerting, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the pilot all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

D&R.110 Software

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

D&R.115 Cybersecurity

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

D&R.120 Contingency Planning

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

D&R.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

D&R.135 Flight Essential Parts

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations Section of the ICA.

Operating Limitations and Information

D&R.200 Flight Manual

The applicant must provide a Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

D&R.205 Instructions for Continued Airworthiness

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

D&R.300 Durability and Reliability

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or external-load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or external-load are retainable and transportable.

D&R.305 Probable Failures

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global Positioning System (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

D&R.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Ability for the pilot to dynamically re-route the UA.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

D&R.315 Fatigue

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

D&R.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on January 21, 2022.

Ian Lucas,

Manager, Policy Implementation Section, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–01556 Filed 1–26–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0331; Project Identifier AD–2020–01703–T; Amendment 39–21887; AD 2021–26–28]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 757 airplanes. This AD was prompted by significant changes, including new or more restrictive requirements, made to the

airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 3, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 3, 2022.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0331.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0331; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Section, FAA, Los Angeles ACO Branch, 3960 Paramount Blvd., Lakewood, CA 90712–4102; phone: 562–627–5262; email: *samuel.lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 757 airplanes. The NPRM published in the **Federal Register** on May 10, 2021 (86 FR 24786). The NPRM was prompted by significant changes, including new or more restrictive requirements, made to the AWLs related to fuel tank ignition prevention and the nitrogen generation system. In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address ignition sources inside the fuel tanks and the increased flammability exposure of the center fuel tank caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane.

Revised Service Information Since the NPRM Was Issued

Since the NPRM was issued, the FAA has reviewed Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated September 2020. The revised service information adds a section that references any Boeing service bulletin modifications that include supplemental structural inspections. This service information revision does not affect the technical content of this AD. The FAA has revised this final rule to require the September 2020 version of the service information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA), Boeing, and United Airlines who supported the NPRM without change.

The FAA received additional comments from three commenters, including Aviation Partners Boeing (APB), Delta Airlines (DAL), and VT Mobile Aerospace Engineering (VT MAE), Inc. The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate (STC) STC ST01518SE does not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees with the commenter that STC ST01518SE does not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01518SE does not affect the ability to accomplish the actions required by this AD. The FAA has not changed this AD in this regard.

Request To Use Certain Documents Associated With a Certain STC

VT MAE proposed that certain maintenance planning documents associated with VT MAE STCs be included in the NPRM. VT MAE stated that certain maintenance documents associated with VT MAE STCs supersede AWL No. 28–AWL–01 of Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated March 2020.

The FAA disagrees with the commenter's request. A maintenance document associated with an STC cannot replace an AWL task established by the type design holder of the aircraft. Furthermore, the maintenance documents referred to by VT MAE and associated with VT MAE STCs are unrelated to the unsafe condition addressed by this AD. If any safety issue associated with VT MAE STCs is reported to the FAA, the FAA may consider a separate AD action to mandate necessary information. The FAA has not changed this AD in this regard.

Request To Clarify Compliance for a Certain STC

DAL requested clarification on how an operator would comply with AWL No. 28–AWL–19 for airplanes that have incorporated TDG Aerospace STC ST01950LA, which installs the universal fault interrupter (UFI) in place of the Boeing ground fault interrupter (GFI) that is referenced in AWL No. 28–AWL–19.

The FAA provides the following clarification. AWL No. 28–AWL–19 specifies the actions that are required before the fuel pump circuit breakers or the GFIs are reset. If the TDG Aerospace UFI is installed in place of the GFI, the actions associated with the GFI as specified in AWL No. 28–AWL–19 are no longer applicable, but the actions associated with the fuel pump circuit breakers in AWL No. 28–AWL–19 are still applicable. The FAA has not changed this AD in this regard.

Request To Clarify the Revision Level for Certain Service Information

DAL requested clarification of the Boeing service bulletins associated with certain AWLs specified by the proposed AD. DAL stated that the Boeing service bulletins are identified without a revision level in the applicability column for the AWLs and that the revision level should be identified. DAL commented that clarification of the

revision level would ensure that operators have the correct information for each AWL.

The FAA disagrees with the request. The FAA has previously issued ADs for Model 757 airplanes requiring accomplishment of the service bulletins referenced in the AWLs associated with Air Transport Association (ATA) Chapter 28. Those ADs specify the revision level of the required service bulletins. If the revision level of a service bulletin is specified in an AWL, it may be possible to have a situation where the revision levels of the service bulletin specified in an AWL and an AD are inconsistent. This could occur when an AD has a provision to allow accomplishment of an earlier revision level of the service bulletin within a certain time period, or when an AD is superseded to mandate a later revision of a service bulletin that was previously required. Such a situation would cause confusion and possibly require a change to an AWL and issuance of a new AD to require an updated AWL. Therefore, the FAA has determined that it would be more effective to not specify the revision level of the referenced service bulletins in the AWLs, so that any conflict regarding the revision level of a service bulletin would not occur between an AWL and an AD that mandated the service bulletin.

As for the AWLs associated with ATA Chapter 47, the operating rules, such as 14 CFR 121.1117(d), 125.509(d) and 129.117(d), require operators to install an FAA-approved flammability reduction means (Boeing Nitrogen Generation System (NGS)). In addition, the operating rules, such as 14 CFR 121.1117(g), 125.509(g), and 129.117(g), require operators to revise the maintenance or inspection program to include applicable airworthiness limitations. The AWLs associated with ATA Chapter 47 and the service bulletins referenced in these AWLs were developed when these operating rules were promulgated. The service bulletins and the AWLs for NGS were approved for compliance with applicable 14 CFR part 25 regulations during certification of the Boeing NGS. Since development of the Boeing NGS service bulletins, the FAA has not received any reports that would raise concern for accomplishing a specific revision level of a service bulletin associated with those operating rules. The FAA has not changed this final rule in this regard.

Request To Not Mandate a Certain AWL in the Proposed AD

DAL requested that incorporation of AWL No. 47–AWL–06 in Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated March 2020, not be required in the proposed AD until specific service instructions are identified and compliance times are adequately defined. DAL stated that certain language in AWL No. 47–AWL–06 requires either that operators implement these FAA-approved design changes or that operators implement other design changes or operational procedural changes approved by the FAA Oversight Office within the compliance time stated in the service instructions. DAL commented that this language essentially forces operators to show compliance for a document that does not yet exist.

DAL also commented that if Boeing publishes service instructions that are FAA approved, then the CDCCL in its current state strips the operator's ability to comment on the service instructions before the service instructions become law.

The FAA disagrees with the request to not mandate the incorporation of AWL No. 47–AWL–06. This specific CDCCL was determined to be necessary during the certification of the NGS as discussed in FAA Equivalent Level of Safety Finding for the Fuel Tank Flammability Rule (FTFR) on Boeing Company Models 737 Classic, 737NG, 747–400, 747–8, 757, 767, 777 and 787 Series Airplanes, Memo No. PS05–0177–P–2, dated November 20, 2015 (ELOS memorandum).[1] The fuel tank flammability analysis conducted by Boeing for the NGS certification was based on airplane descent rates that were slower than the rates defined in Reduction of Fuel Tank Flammability in Transport Category Airplanes (73 FR 42444, July 21, 2008), the FTFR rule. The data provided by Boeing showed that when the airplane descent rate defined in the rule was used, the flammability levels would exceed the limits required by the FTFR rule. Boeing proposed to use descent rates slower than the rates defined in the FTFR rule and provided supportive data based on operation of the transport fleet. Under the ELOS memorandum, Boeing is required to monitor U.S. fleet descent rates and to develop service instructions if the fleet average flammability exposure approaches the limits required by the FTFR rule due to an increase in the descent rates. These requirements for Boeing and the conditions specified in the CDCCL, which include the requirement for operators to incorporate service instructions, were determined to be compensating design features or alternative standards to justify the ELOS finding.

Furthermore, incorporation of the AWLs associated with ATA Chapter 47 required for Model 757 airplanes is required by operating rules such as 14 CFR 121.1117(g), 125.509(g), and 129.117(g). Therefore, an earlier version of AWL No. 47–AWL–06 with essentially the same content as the version of AWL No. 47–AWL–06 that is mandated by this AD should already exist in operator's maintenance or inspection program, as applicable. This AD requires incorporation of AWL No. 47–AWL–06 in Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated September 2020. Even if the requirement to incorporate AWL No. 47–AWL–06 is removed from this AD as proposed by the commenter, operators still must comply with the same requirements of AWL No. 47–AWL–06 that already exist in their maintenance or inspection program, as applicable. The FAA has not changed this final rule in this regard.

Request for Clarification for Incorporating Section E of the Service Information

DAL requested clarification of the requirements for paragraph (g) of the proposed AD. DAL stated that paragraph (g) of the proposed AD would require incorporating the information in Section E, including Subsections E.1 and E.3, of Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated March 2020. DAL stated that Section E contains subsections E.1, E.2, E.3, and E.4, so it is unclear why Subsections E.1 and E.3 are specifically identified, because it seems redundant. DAL commented that if only Subsections E.1 and E.3 are required, then those subsections should be identified specifically.

The FAA provides the following clarification. Section E contains information prior to the beginning of Subsection E.1, such as ''Introduction'' and ''Regulatory Agency Approval.'' The FAA has determined that certain information, such as the information provided under the ''Definitions,'' is critical to performing the maintenance required by the AWLs. Paragraph (g) of this AD requires incorporation of the information contained in Section E prior to the beginning of Subsection E.1, as

[1] *https://drs.faa.gov/browse/excelExternalWindow/dba562e3-218f-423a-b24e-a1e77ded8e0a.*

well as incorporation of Subsections E.1 and E.3. Incorporation of the information in Subsections E.2 and E.4 was previously addressed by separate AD actions or as an alternative methods of compliance (AMOC). Since then, the information in Subsections E.2 and E.4 has not been revised to a level that would affect safety and warrant a new AD action. Therefore, the FAA has clarified paragraph (g) of this AD to specify that incorporation of Subsections E.2 and E.4 into the existing maintenance or inspection program, as applicable, is not required by this AD.

Request To Remove Certain Service Information From the AWL

DAL requested removal of Boeing Service Bulletin 757–47–0005, as specified in the ''Applicability'' column of certain AWLs in Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated March 2020, and in paragraphs (g)(10) through (12) of the proposed AD. DAL stated the service information is not available to operators, and removal of the service information in the AWLs would help operators better understand the scope of the proposed AD.

The FAA disagrees with the commenter's request since Boeing Service Bulletin 757–47–0005 applies only to certain operators. The FAA has confirmed with Boeing that Service Bulletin 757–47–0005 can be searched and accessed only by operators who are affected by that service information. The FAA has not changed this final rule in this regard.

Request To Use a Previously Issued AMOC

Aviation Partners Boeing stated it has an existing AMOC that corresponds to AD 2012–12–15, Amendment 39–17095 (77 FR 42964, July 23, 2012) (AD 2012–12–15), which allows Model 757–300 series airplanes with STC ST01518SE to install a longer fastener than what is specified in Item 4 of AWL No. 28–AWL–18 in Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated March 2020. APB suggested that paragraph (k) of the proposed AD include AMOCs approved for AD 2012–12–15 for the corresponding actions in paragraphs (j)(1) and (2) of the proposed AD.

The FAA agrees that the AMOC for AD 2012–12–15, which was approved for STC ST01518SE, should be addressed. The FAA previously determined that the installation of an alternative fastener under STC ST01518SE would be adequate. However, the FAA has determined that it would be more appropriate to specify the requirements associated with STC ST01518SE in this AD instead of accepting a previously approved AMOC. The FAA has added paragraph (i) in this AD to address airplanes that have been modified under STC ST01518SE. In addition, subsequent paragraphs in this AD have been redesignated accordingly.

Additional Changes to the AMOC Paragraph

Since the NPRM was issued, the FAA has updated paragraph (l) of this AD to specify the Los Angeles ACO Branch has the authority to approve AMOCs for this AD.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated September 2020. This service information specifies airworthiness limitation instruction (ALI) and CDCCL tasks related to fuel tank ignition prevention and the nitrogen generation system. 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 **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 493 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

(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 Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–26–28 The Boeing Company: Amendment 39–21887; Docket No. FAA–2021–0331; Project Identifier AD–2020–01703–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 3, 2022.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) and (2) of this AD.

(1) AD 2012–12–15, Amendment 39–17095 (77 FR 42964, July 23, 2012) (AD 2012–12–15).

(2) AD 2018–20–13, Amendment 39–19447 (83 FR 52305, October 17, 2018) (AD 2018–20–13).

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by significant changes, including new or more restrictive requirements, made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. The FAA is issuing this AD to address ignition sources inside the fuel tanks and the increased flammability exposure of the center fuel tank caused by latent failures, alterations, repairs, or maintenance actions, which could result in a fuel tank explosion and consequent loss of an airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Except as provided by paragraphs (h) and (i) of this AD, within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Section E., ''Airworthiness Limitations—Systems,'' of the Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated September 2020; except this AD does not require incorporation of the information specified in Subsections E.2 and E.4. The initial compliance time for doing the airworthiness limitation instruction (ALI) tasks is at the times specified in paragraphs (g)(1) through (12) of this AD.

(1) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': Within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01.

(2) For AWL No. 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination'': Within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03.

(3) For AWL No. 28–AWL–14, ''Main and Center Wing Tank Fueling Shutoff Valve Body and Actuator—Fault Current Bond'': Within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–14.

(4) For AWL No. 28–AWL–20, ''Center Tank Fuel Override Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 757–28A0081 or Boeing Service Bulletin 757–28A0082, as applicable; or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–20; whichever occurs later.

(5) For AWL No. 28–AWL–21, ''Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 757–28A0078 or Boeing Service Bulletin 757–28A0079, as applicable; or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–21; whichever occurs later.

(6) For AWL No. 28–AWL–25, ''Motor Operated Valve (MOV) Actuator—Lightning and Fault Current Protection Electrical Bond'': Within 72 months after accomplishment of the actions specified in Boeing Service Bulletin 757–28A0088, or within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–25, whichever occurs later.

(7) For AWL No. 28–AWL–26, ''Center Tank Fuel Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 757–28A0105, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–26, whichever occurs later.

(8) For AWL No. 28–AWL–30, ''AC Fuel Pump Fault Current Bonding Jumper Installation, Main and Center Tank'': Within 24 months after the effective date of this AD, or within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–30, whichever occurs later.

(9) For AWL No. 28–AWL–33, ''Full Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks'': Within 24 months after the effective date of this AD; or within 144 months after accomplishment of the actions specified in Boeing Service Bulletin 757–57A0064 (Part 2 through Part 10 of the Work Instructions); or within 144 months since the most recent inspection was performed as specified in AWL No. 28–AWL–33; whichever occurs later.

(10) For AWL No. 47–AWL–04, ''NGS—NEA Distribution Ducting'': Within 17,300 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 757–47–0001 or Boeing Service Bulletin 757–47–0005, as applicable; or within 17,300 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–04; whichever occurs later.

(11) For AWL No. 47–AWL–05, ''NGS—Cross Vent Check Valve'': Within 17,300 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 757–47–0001 or Boeing Service Bulletin 757–47–0005, as applicable; or within 17,300 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–05; whichever occurs later.

(12) For AWL No. 47–AWL–07, ''NGS—Thermal Switch'': Within 48,000 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 757–47–0001 or Boeing Service Bulletin 757–47–0005, as applicable; or within 48,000 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–07; whichever occurs later.

(h) Additional Acceptable Wire Types and Sleeving

During accomplishment of the actions required by paragraph (g) of this AD, the alternative materials specified in paragraphs (h)(1) and (2) of this AD are acceptable.

(1) Where AWL No. 28–AWL–05 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL No. 28–AWL–05 identifies TFE–2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

(i) Additional Acceptable Materials for Airplanes Modified Under Aviation Partners Boeing Supplemental Type Certificate (STC) ST01518SE

During accomplishment of the actions required by paragraph (g) of this AD, the following alternative materials are acceptable: For Model 757–300 series airplanes modified using Aviation Partners Boeing STC ST01518SE, issued March 25, 2005, where AWL No. 28–AWL–18 requires the use of conductive fasteners having Part Number (P/N) BACB30LR4–7, this AD allows the use of conductive fasteners having P/N BACB30LR4–7 and P/N BACB30LR4–9.

(j) No Alternative Actions, Intervals, or CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections),

intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(k) Terminating Actions for Certain AD Requirements

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (k)(1) and (2) of this AD for that airplane.

(1) All requirements of AD 2012–12–15.

(2) The requirements in paragraph (i)(2) of AD 2018–20–13.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(m) Related Information

For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Section, FAA, Los Angeles ACO Branch, 3960 Paramount Blvd., Lakewood, CA 90712–4102; phone: 562–627–5262; email: *samuel.lee@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing 757 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622N001–9, dated September 2020.

(ii) [Reserved]

(3) 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.*

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

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

Issued on December 17, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01568 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0514; Project Identifier MCAI–2020–01570–T; Amendment 39–21890; AD 2022–01–02]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes. This AD was prompted by a report that the epoxy primer on the internal bore of the nacelle and landing gear attachment pins was not applied, and corrosion on the internal bore of the wing rear spar attachment pins was found. This AD requires doing a detailed visual inspection of the nacelle to wing rear spar attachment pins, and the nacelle and landing gear attachment pins, for any corrosion, and doing all applicable corrective actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 3, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 3, 2022.

ADDRESSES: For service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0514.

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–2021–0514; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Deep Gaurav, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–51R1, dated February 24, 2021 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0514.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 airplanes. The NPRM published in the **Federal Register** on June 29, 2021 (86 FR 34163). The NPRM was prompted by a report that the epoxy

primer on the internal bore of the nacelle and landing gear attachment pins was not applied, and corrosion on the internal bore of the wing rear spar attachment pins was found. The NPRM proposed to require doing a detailed visual inspection of the nacelle to wing rear spar attachment pins, and the nacelle and landing gear attachment pins, for any corrosion, and doing all applicable corrective actions. The FAA is issuing this AD to address premature corrosion and subsequent failure of the nacelle to landing gear and nacelle to rear wing spar attachment pins, which if undetected, could lead to a single or dual collapse of the main landing gear. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Use the Latest Service Information

Horizon Air requested that the latest service information be used in the proposed AD. Horizon Air stated that since the NPRM was issued, the applicable service information specified in figure 1 to paragraph (g) of the proposed AD has been revised to De Havilland Aircraft of Canada Limited Service Bulletin 84–54–31, Revision C, dated March 15, 2021. Horizon Air also requested that paragraph (h)(3) of the proposed AD be revised to allow credit for De Havilland Aircraft of Canada Limited Service Bulletin 84–54–31, Revision B, dated February 21, 2020, if those actions were performed before the effective date of the proposed AD.

The FAA agrees to use the latest service information in this AD. De Havilland Aircraft of Canada Limited Service Bulletin 84–54–31, Revision C, dated March 15, 2021, adds information to the ''Effectivity'' section for production airplanes, *i.e.,* specifying airplane line numbers that will have certain ModSums (for application of primer and corrosion preventive compound) installed before delivery. This information does not affect the applicability of this AD.

De Havilland Aircraft of Canada Limited Service Bulletin 84–54–31, Revision C, dated March 15, 2021, also adds additional acceptable polyurethane enamel, and clarifies that production pins can be used to replace corroded pins. These changes do not affect operators who use previous revisions of the service information to show compliance with this AD. There are no substantive changes to the procedures between Revision C of the service information and Revision B, which was proposed as required in the NPRM. Further, the technical content of this AD and the service information remains unchanged. The FAA has revised the ''Related Service Information Under 1 CFR part 51'' paragraph, Figure 1 to paragraph (g) of this AD, and paragraphs (g)(2) and (i) of this AD accordingly. The FAA has also added paragraph (h)(4) of this AD to specify the requested credit.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued Service Bulletin 84–54–28, Revision B, dated January 24, 2020; and Service Bulletin 84–54–31, Revision C, dated March 15, 2021. This service information describes procedures for doing a detailed visual inspection of the nacelle to wing rear spar attachment pins, and the nacelle and landing gear attachment pins, for any corrosion; and doing all applicable corrective actions. Corrective actions include applying epoxy primer to the bore surface of the pins, a fluorescent magnetic particle inspection for any cracking, corrosion removal, reworking and part marking certain pins, and replacing any cracked or corroded pins with serviceable pins. These documents are distinct since they apply to different airplane configurations.

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.

Costs of Compliance

The FAA estimates that this AD will affect 41 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 9 work-hours × $85 per hour = Up to $765	$0	Up to $765	Up to $31,365.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this 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

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

responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–01–02 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–21890; Docket No. FAA–2021–0514; Project Identifier MCAI–2020–01570–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 3, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (type certificate previously held by Bombardier, Inc.) Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, 4003 through 4550 inclusive, 4583 through 4585 inclusive, 4587, 4588, and 4590.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by a report that the epoxy primer on the internal bore of the nacelle and landing gear attachment pins was not applied, and corrosion on the internal bore of the wing rear spar attachment pins was found. The FAA is issuing this AD to address premature corrosion and subsequent failure of the nacelle to landing gear and nacelle to rear wing spar attachment pins, which if undetected, could lead to a single or dual collapse of the main landing gear.

(f) Compliance

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

(g) Inspection and Corrective Actions

(1) At the applicable compliance times specified in paragraphs (g)(1)(i) through (iii) of this AD: Do a detailed visual inspection of the nacelle to wing rear spar attachment pins, and the nacelle and landing gear attachment pins, for any cracking or corrosion, and do all applicable corrective actions, in accordance with Part A or Part B, as applicable, of Section 3., ''Accomplishment Instructions,'' of the applicable service information specified in figure 1 to paragraph (g) of this AD. Do all applicable corrective actions before further flight.

Figure 1 to paragraph (g) – *Service Information*

Serial Numbers–	Service Information–
4001, 4003 through 4550 inclusive	De Havilland Aircraft of Canada Limited Service Bulletin 84-54-28, Revision B, dated January 24, 2020
4001, 4003 through 4533 inclusive, 4583 through 4585 inclusive, 4587, 4588 and 4590	De Havilland Aircraft of Canada Limited Service Bulletin 84-54-31, Revision C, dated March 15, 2021

(i) For nacelle to wing rear spar attachment pins, or nacelle and landing gear attachment pins, as applicable, that have accumulated less than 26,000 flight cycles as of the effective date of this AD, and have been in service less than 12 years from their entry-into-service as of the effective date of this AD: Prior to the pins reaching 14 years from their entry-into-service, or prior to the airplane reaching 30,000 total flight cycles, whichever occurs first.

(ii) For nacelle to wing rear spar attachment pins, or nacelle and landing gear attachment pins, as applicable, that have accumulated 26,000 flight cycles or more as of the effective date of this AD, or have been in service 12 years or more from their entry-into-service as of the effective date of this AD: Within 4 years or 8,000 flight hours after the effective date of this AD, whichever occurs first.

(iii) For airplanes on which the actions specified in Bombardier Service Bulletin 84–54–27, dated August 11, 2017; or Bombardier Service Bulletin 84–54–28, dated August 11, 2017; as applicable, have been accomplished: Within 14 years or 30,000 flight cycles after the date of incorporation of Bombardier Service Bulletin 84–54–27, dated August 11, 2017; or Bombardier Service Bulletin 84–54–28, dated August 11, 2017; as applicable, whichever occurs first.

(2) For serial numbers 4583, 4584, 4585, 4587, 4588 and 4590: At the applicable compliance times specified in paragraphs (g)(1)(i) through (iii) of this AD, re-part mark the yoke attachment pin, in accordance with Part B of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–54–31, Revision C, dated March 15, 2021.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (h)(1) through (4) of this AD.

(1) Bombardier Service Bulletin 84–54–28, Revision A, dated April 10, 2019.

(2) Bombardier Service Bulletin 84–54–31, dated May 1, 2019.

(3) Bombardier Service Bulletin 84–54–31, Revision A, dated October 15, 2019.

(4) De Havilland Aircraft of Canada Limited Service Bulletin 84–54–31, Revision B, dated February 21, 2020.

(i) No Reporting Requirement

Although De Havilland Aircraft of Canada Limited Service Bulletin 84–54–28, Revision B, dated January 24, 2020; and De Havilland

Aircraft of Canada Limited Service Bulletin 84–54–31, Revision C, dated March 15, 2021; specify 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, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–51R1, dated February 24, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0514.

(2) For more information about this AD, contact Deep Gaurav, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) De Havilland Aircraft of Canada Limited Service Bulletin 84–54–28, Revision B, dated January 24, 2020.

(ii) De Havilland Aircraft of Canada Limited Service Bulletin 84–54–31, Revision C, dated March 15, 2021.

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.*

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

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

Issued on December 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01569 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0615; Project Identifier MCAI–2021–00177–T; Amendment 39–21886; AD 2021–26–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by a report indicating that during production, the manual opening and closing of the over-wing emergency exit door (OWEED) prior to the installation of the OWEED interior panel could have resulted in damaged insulation blankets below the left and right OWEEDs. This AD requires a one-time inspection for damage of the insulation blankets below the left and right OWEEDs, and replacement if necessary, as specified in a Transport Canada Civil Aviation (TCCA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 3, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 3, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *https://tc.canada.ca/en/aviation.* 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–2021–0615.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0615; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

TCCA, which is the aviation authority for Canada, issued TCCA AD CF–2021–03 on February 11, 2021 (TCCA AD CF–2021–03) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and

BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on August 3, 2021 (86 FR 41788). The NPRM was prompted by a report indicating that during production, the manual opening and closing of the OWEED prior to the installation of the OWEED interior panel could have resulted in damaged insulation blankets below the left and right OWEEDs. The NPRM proposed to require a one-time inspection for damage of the insulation blankets below the left and right OWEEDs, and replacement if necessary, as specified in TCCA AD CF–2021–03.

The FAA is issuing this AD to address potential damage to the insulation blankets, which could result in delayed passenger evacuation in the event of post-crash/post-impact fire events outside the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from one commenter, Delta Air Lines (DAL). The following presents the comment received on the NPRM and the FAA's response to that comment.

Request To Omit Exception

DAL asked that the FAA remove the exception identified in paragraph (h)(2) of the proposed AD, since it provides no value to the end product. DAL stated that the instructions in TCCA AD CF-2021-03, and Airbus Canada Service Bulletin BD500-258003, Issue 001, dated November 5, 2020, include implementation of corrective action for discrepancies, and neither allows deferring any corrective actions beyond maintenance after the inspection is done and corrosion is documented.

The FAA does not agree with the commenter's request. This exception was included to require replacement of any damaged insulation blanket before further flight, because no separate compliance time was provided in the referenced service information for the corrective actions. Without the exception specified in paragraph (h)(2) of this AD, operators could wait until the end of the compliance time (4,500 flight hours or 24 months after the effective date of this AD, whichever occurs first) to replace damaged insulation blankets, instead of replacing them before further flight. Therefore, the FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

TCCA AD CF–2021–03 describes procedures for a one-time visual inspection for damage of the insulation blankets below the left and right OWEEDs, and replacement of any damaged insulation blankets. 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.

Costs of Compliance

The FAA estimates that this AD affects 33 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$0	$255	$8,415

The FAA estimates the following costs to do any necessary on-condition action that will be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$150	$320

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

(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 Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–26–27 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–21886; Docket No. FAA–2021–0615; Project Identifier MCAI–2021–00177–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 3, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Civil Aviation (TCCA) AD CF–2021–03, issued February 11, 2021 (TCCA AD CF–2021–03).

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by a report indicating that during production, the manual opening and closing of the over-wing emergency exit door (OWEED) prior to the installation of the OWEED interior panel could have resulted in damaged insulation blankets below the left and right OWEEDs. The FAA is issuing this AD to address this condition, which could result in delayed passenger evacuation in the event of post-crash/post-impact fire events outside the airplane.

(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, TCCA AD CF–2021–03.

(h) Exceptions to TCCA AD CF–2021–03

(1) Where TCCA AD CF–2021–03 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where TCCA AD CF–2021–03 specifies replacement of damaged blankets, this AD requires replacement before further flight after damage is detected.

(3) Where TCCA AD CF–2021–03 refers to ''hours air time,'' this AD requires using flight hours.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or TCCA; or Airbus Canada's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

For more information about this AD, contact Elizabeth Dowling, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada Civil Aviation (TCCA) AD CF–2021–03, issued February 11, 2021.

(ii) [Reserved]

(3) For TCCA AD CF–2021–03, contact Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *https://tc.canada.ca/en/aviation.*

(4) 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.

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

Issued on December 17, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01567 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0012; Project Identifier AD–2022–00057–T; Amendment 39–21922; AD 2022–03–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 747–8F and 747–8 series airplanes and Model 777 airplanes. This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that this interference may affect multiple airplane systems using radio altimeter data, including the pitch control laws, including those that provide tail strike protection, regardless of the approach type or weather. This AD requires revising the limitations section of the existing airplane flight manual (AFM) to incorporate limitations prohibiting dispatching or releasing to airports, and approaches or landings on runways, when in the presence of 5G C-Band interference as identified by Notices to Air Missions (NOTAMs). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 27, 2022.

The FAA must receive comments on this AD by March 14, 2022.

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

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

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0012; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dean Thompson, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3165; email: *dean.r.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In March 2020, the United States Federal Communications Commission (FCC) adopted final rules authorizing flexible use of the 3.7–3.98 GHz band for next generation services, including 5G and other advanced spectrum-based services.[1] Pursuant to these rules, C-Band wireless broadband deployment is permitted to occur in phases with the opportunity for operations in the lower 0.1 GHz of the band (3.7–3.8 GHz) in certain markets as early as January 19, 2022. This AD refers to ''5G C-Band'' interference, but wireless broadband technologies, other than 5G, may use the same frequency band.[2] These other uses of the same frequency band are within the scope of this AD since they would introduce the same risk of radio altimeter interference as 5G C-Band.

The radio altimeter is an important aircraft instrument, and its intended function is to provide direct height-above-terrain/water information to a variety of aircraft systems. Commercial aviation radio altimeters operate in the 4.2–4.4 GHz band, which is separated by 0.22 GHz from the C-Band telecommunication systems in the 3.7–3.98 GHz band. The radio altimeter is more precise than a barometric altimeter and for that reason is used where aircraft height over the ground needs to be precisely measured, such as autoland, manual landings, or other low altitude operations. The receiver on the radio altimeter is typically highly accurate, however it may deliver erroneous results in the presence of out-of-band radio frequency emissions from other frequency bands. The radio altimeter must detect faint signals reflected off the ground to measure altitude, in a manner similar to radar. Out-of-band signals could significantly degrade radio altimeter functions during critical phases of flight, if the altimeter is unable to sufficiently reject those signals.

The FAA issued AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) (AD 2021–23–12) to address the effect of 5G C-Band interference on all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. AD 2021–23–12 requires revising the limitations section of the existing AFM to incorporate limitations prohibiting certain operations, which require radio altimeter data to land in low visibility conditions, when in the presence of 5G C-Band interference as identified by NOTAM. The FAA issued AD 2021–23–12 because radio altimeter anomalies that are undetected by the automation or pilot, particularly close to the ground (*e.g.,* landing flare), could lead to loss of continued safe flight and landing.

Since the FAA issued AD 2021–23–12, Boeing has continued to evaluate potential 5G C-band interference on aircraft systems that rely on radio altimeter inputs. As a result of this ongoing evaluation, Boeing issued Boeing Multi Operator Messages MOM–MOM–22–0024–01B(R2), dated January 18, 2022, and MOM–MOM–22–0039–01B(R1), dated January 18, 2022, for Boeing Model 777 airplanes and Model 747–8F and 747–8 series airplanes, respectively.

Based on Boeing's data, the FAA identified an additional hazard presented by 5G C-band interference on The Boeing Company Model 747–8F and 747–8 series airplanes and Model 777 airplanes. The FAA determined that anomalies due to 5G C-Band interference may affect multiple airplane systems using radio altimeter data, including the pitch control laws, including control laws that provide tail strike protection, regardless of the approach type or weather. These anomalies may not be evident until very low altitudes. Due to 5G C-Band interference, missing or erroneous radio altimeter data used by the flight control system may result in uncommanded, inappropriate pitch inputs, adversely affecting controllability. This interference could also cause multiple erroneous flight deck effects, including misleading flight director information and erroneous autothrottle behavior and Flight Mode Annunciations. These flight deck effects, when combined with the effects of the uncommanded, inappropriate pitch inputs, could affect the flightcrew's ability to accomplish continued safe flight and landing. Other systems that could be impacted by this missing or erroneous data, and contribute to this hazard, include, but are not limited to: Autopilot flight director system; autothrottle system; engines; flight controls; flight instruments; traffic alert and collision avoidance system (TCAS); ground proximity warning system (GPWS); and configuration warnings.

In sum, 5G C-Band interference, which may result in missing or erroneous radio altimeter data provided to the airplane's flight control computers where pitch control and other laws reside, in combination with multiple flight deck effects, could result in uncommanded, inappropriate pitch inputs, which are especially hazardous at low altitudes, and loss of continued safe flight and landing. This is an unsafe condition.

This AD requires revising the limitations section of the existing AFM to incorporate limitations prohibiting dispatching or releasing to airports, and approaches or landings on runways, when in the presence of 5G C-Band interference as identified by NOTAMs.

The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

AD Requirements

This AD requires revising the limitations section of the existing AFM to incorporate limitations prohibiting dispatching or releasing to airports, and approaches or landings on runways,

[1] The FCC's rules did not make C-Band wireless broadband available in Alaska, Hawaii, and the U.S. Territories.

[2] The regulatory text of the AD uses the term ''5G C-Band'' which, for purposes of this AD, has the same meaning as ''5G'', ''C-Band'' and ''3.7–3.98 GHz.''

when in the presence of 5G C-Band interference as identified by NOTAMs.

Compliance With AFM Revisions

Section 91.9 prohibits any person from operating a civil aircraft without complying with the operating limitations specified in the AFM. FAA regulations also require operators to furnish pilots with any changes to the AFM (14 CFR 121.137) and pilots in command to be familiar with the AFM (14 CFR 91.505).

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because missing or erroneous radio altimeter data provided (as a result of 5G C-Band interference) to the airplane's pitch control laws, in combination with multiple flight deck effects, could lead to uncommanded, inappropriate pitch inputs, and the loss of continued safe flight and landing. The urgency is based on the hazard presented by such pitch inputs occurring at low altitudes, and on C-Band wireless broadband deployment, which is expected to occur in phases with operations beginning as soon as January 19, 2022. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2022–0012 and Project Identifier AD–2022–00057–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dean Thompson, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3165; email: *dean.r.thompson@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 336 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$28,560

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–03–05 The Boeing Company: Amendment 39–21922 ; Docket No. FAA–2022–0012; Project Identifier AD–2022–00057–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes identified in paragraphs (c)(1) and (2) of this AD, certificated in any category.

(1) Model 747–8F and 747–8 series airplanes.

(2) Model 777–200, –200LR, –300, –300ER, and 777F series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a determination that this interference may affect other airplane systems using radio altimeter data, including the pitch control laws, including those that provide tail strike protection, regardless of the approach type or weather. The FAA is issuing this AD to address missing or erroneous radio altimeter data, which, in combination with multiple flight deck effects, could lead to loss of continued safe flight and landing.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

Within 2 days after the effective date of this AD: Revise the Limitations Section of the existing AFM to include the information specified in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of figure 1 to paragraph (g) of this AD into the existing AFM.

Figure 1 to paragraph (g) – *AFM Limitations Revision*

(Required by AD 2022-03-05)

Approaches and Landings in the Presence of Radio Altimeter 5G C-Band Interference

Dispatching or releasing to airports, and approaches or landings on runways, in U.S. airspace in the presence of 5G C-Band wireless broadband interference as identified by NOTAM is prohibited (NOTAMs will be issued to state the specific airports or approaches where the radio altimeter is unreliable due to the presence of 5G C-Band wireless broadband interference).

Note 1 to paragraph (g): Additional information about the unsafe condition identified in this AD can be found in Boeing Multi Operator Messages MOM–MOM–22–0024–01B(R2), dated January 18, 2022, and MOM–MOM–22–0039–01B(R1), dated January 18, 2022, for Boeing Model 777 airplanes and Model 747–8F and 747–8 series airplanes, respectively.

(h) 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(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 responsible Flight Standards Office.

(3) AMOCs approved for AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) providing relief for specific radio altimeter installations are approved as AMOCs for the provisions of this AD.

(i) Related Information

(1) For more information about this AD, contact Dean Thompson, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3165; email: *dean.r.thompson@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, 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.*

(j) Material Incorporated by Reference

None.

Issued on January 20, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–01695 Filed 1–25–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0169; Airspace Docket No. 21–ASO–3]

RIN 2120–AA66

Amendment Class D and Class E Airspace; South Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, delay of effective date.

SUMMARY: This action changes the effective date of a final rule published in the **Federal Register** on September 8, 2021, amending airspace for several airports in the south Florida area. The FAA is delaying the effective date to coincide with the completion of ongoing airspace projects in the area.

DATES: The effective date of the final rule published on September 8, 2021 (86 FR 50245) is delayed until May 19, 2022. The Director of the Federal Register approved this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule in the **Federal Register** for Docket No. FAA 2021–0169 (86 FR 50245, September 8, 2021), amending Class D and Class E airspace for eight airports in the south Florida area. The effective date for that final rule is January 27, 2022. Due to delays in other rule making projects in the area, the FAA is delaying the effective date to May 19, 2022. 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. FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Good Cause for No Notice and Comment

Section 553(b)(3)(B) of Title 5, United States Code, (the Administrative Procedure Act) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The FAA finds that prior notice and public comment to this final rule is unnecessary due to the brief length of the extension of the effective date and the fact that there is no substantive change to the rule.

Delay of Effective Date

Accordingly, pursuant to the authority delegated to me, the effective date of the final rule, Airspace Docket 21–ASO–3, as published in the **Federal Register** on September 8, 2021 (86 FR 50245), FR Doc. 2021–19268, is hereby delayed until May 19, 2022.

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.

Issued in College Park, Georgia, on January 21, 2022.

Andreese C. Davis,

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

[FR Doc. 2022–01526 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0912]

Special Local Regulation; Hanohano Ocean Challenge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Hanohano Ocean Challenge special local regulations on the waters of Mission Bay, California on January 29, 2022. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 7 a.m. through 3 p.m. on January 29, 2022, for the locations described in Item No. 13 in Table 1 of § 100.1101.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the Hanohano Ocean Challenge in Mission Bay, CA in 33 CFR 100.1101, for the locations described in Table 1, Item No. 13 of that section from 7 a.m. until 3 p.m. on January 29, 2022. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: January 20, 2022.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2022–01583 Filed 1–26–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0034]

RIN 1625–AA87

Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary, 500-yard radius, moving security zone for certain Liquefied Natural Gas Carrier (LNGC) within the Corpus Christi Ship Channel and La Quinta Channel. The security zone is needed to protect the vessel and the marine environment from potential hazards created by Liquefied Natural Gas (LNG) cargo aboard the vessel. Entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from 12:01 a.m. until 11:59 p.m. on January 27, 2022. For the purposes of enforcement, actual notice will be used from January 24, 2022, until 12:01 a.m. on January 27, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *Anthony.M.Garofalo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
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 it is impracticable. We must establish this security zone by January 24, 2022, to ensure security of this vessel and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 contrary to the public interest because immediate action is needed to provide for the security of the vessel.

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 Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit of the Motor Vessel (M/V) POINT FORTIN when loaded will be a security concern within a 500-yard radius of the vessel. This rule is needed to protect the vessel while the vessel is transiting within Corpus Christi, TX, from January 24, 2022, through January 27, 2022.

IV. Discussion of the Rule

The Coast Guard is establishing a 500-yard radius temporary moving security zone around M/V POINT FORTIN. The zone for the vessel will be enforced from January 24, 2022, until it departs the Corpus Christi Ship Channel and La Quinta Channel loaded on January 27, 2022. The duration of the zone is intended to protect the vessel and cargo on board while the vessel is in transit. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

Entry into this security zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi. Persons or vessels desiring to enter or pass through this zone must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 361–939–0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for this security zone.

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. 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).

This regulatory action determination is based on the size, duration, and location of the security zone. This rule will impact a small designated area of 500-yards around the vessel in the Corpus Christi Ship Channel and La Quinta Channel over a 4 hour period of time as each vessel transits the channel. Moreover, the rule allows vessels to seek permission to enter 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 temporary security 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 contact 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 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 moving security zone lasting for the duration of time that the M/V POINT FORTIN is within the Corpus Christi Ship Channel and La Quinta Channel while loaded with cargo. It will prohibit entry within a 500 yard radius of M/V POINT FORTIN while the vessel is transiting loaded within Corpus Christi Ship Channel and La Quinta Channel. It is categorically excluded from further review under L60 in Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact 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 recordkeeping 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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0034 to read as follows:

§ 165.T08–0034 Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX.

(a) *Location.* The following area is a security zone: All navigable waters encompassing a 500-yard radius around each of the following vessel: M/V POINT FORTIN while the vessel is in the Corpus Christi Ship Channel and La Quinta Channel.

(b) *Effective period.* This section is effective without actual notice from 12:01 a.m. until 11:59 p.m. on January 27, 2022. For the purposes of enforcement, actual notice will be used from January 24, 2022, until 12:01 a.m. on January 27, 2022.

(c) *Regulations.* (1) The general regulations in § 165.33 apply. Entry into the zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zone must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for the security zone.

Dated: January 21, 2022.

H.C. Govertsen,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2022–01656 Filed 1–26–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0417; FRL–9301–01–OCSPP]

Cyprodinil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyprodinil in

or on multiple crops that are referenced later in this document. The Interregional Project Number 4 (IR–4) requested these tolerances under section 346a of the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 27, 2022. Objections and requests for hearings must be received on or before March 28, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0417, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Due to the public health concerns relating to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide customer service via email, phone, and webform. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0417 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before March 28, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0417, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08) EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8846) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.532 be amended by establishing tolerances for residues of Cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2- pyrimidinamine, in or on the raw agricultural commodities: *Brassica,* leafy greens, subgroup 4–16B, except watercress at 10 parts per million (ppm); Celtuce at 30 ppm; Fennel, Florence, fresh leaves and stalk at 30 ppm; Kohlrabi at 1 ppm; Leaf petiole vegetable subgroup 22B at 30 ppm; Leafy greens subgroup 4–16A, except parsley, fresh leaves at 50 ppm; Lemon/lime subgroup 10–10B at 0.6 ppm; Sugar apple at 4 ppm; Tropical and subtropical, small fruit, inedible peel, subgroup 24A at 2 ppm; and Vegetable, *Brassica,* head and stem, group 5–16 at 1 ppm. The petition also requested to remove established tolerances for residues of Cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on the raw agricultural commodities: *Brassica,* head and stem, subgroup 5A at 1.0 ppm; *Brassica,* leafy greens, subgroup 5B at 10.0 ppm; Leaf petioles subgroup 4B at 30 ppm; Leafy greens subgroup 4A at 50 ppm; Lemon at 0.60 ppm; Lime at 0.60 ppm; Longan at 2.0 ppm; Lychee at 2.0 ppm; Spanish lime at 2.0 ppm; and Turnip, greens at 10.0 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the commodity definition for one of the crop groups. A discussion of this modification can be found in section IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.''

Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

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

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

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

Toxicological profile. For a discussion of the Toxicological Profile of cyprodinil, see Unit III.A. of the July 21, 2016 final rulemaking (81 FR 47304) (FRL–9948–28).

Toxicological points of departure/ Levels of concern. For a summary of the Toxicological Points of Departure/ Levels of Concern for cyprodinil used for human risk assessment, please reference Unit III.B. of the August 17, 2012 rulemaking (77 FR 49732) (FRL–9359–7). The table in the August 17, 2012 rulemaking included an endpoint for inhalation short-term exposures. However, the Agency has made the assumption in the current assessment that cyprodinil products are not for homeowner use, has not conducted a quantitative residential handler assessment as in previous reviews, and did not use the inhalation endpoint.

Exposure assessment. Much of the exposure assessment remains the same although updates have occurred to accommodate exposures from the petitioned-for tolerance and reflect changes to the residential exposure assessment. These updates are discussed in this section; for a description of the rest of the EPA approach to and assumptions for the exposure assessment, please reference Unit III.C. of the July 21, 2016 rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposure from the new use of cyprodinil on sugar apple and the crop group conversions and expansions requested in this action. Partially refined acute and chronic aggregate dietary (food and drinking water) exposure and risk assessments were conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. The assessments used established and recommended tolerance-level residues for some commodities, average field trial residues for the remaining commodities (chronic only), 100 percent crop treated (PCT), and EPA's 2018 default processing factors (except for potato granules/flakes, potato flour, tomato paste, tomato puree, lemon juice, apple juice, dried prune plum, and grape juice).

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Drinking water exposure. The new use does not result in an increase in the estimated residue levels in drinking water, so EPA used the same estimated drinking water concentrations in the acute and chronic dietary assessments as identified in the July 2016 rulemaking.

Non-occupational exposure. The previous review included a residential handler assessment which is no longer applicable. All registered cyprodinil product labels with residential use sites require that handlers wear specific clothing (*e.g.,* long sleeve shirt/long pants) and/or use personal protective equipment (PPE). Therefore, the Agency has made the assumption that these products are not for homeowner use and has not conducted a quantitative residential handler assessment as in previous reviews. A quantitative residential post-application assessment was also not conducted as incidental oral exposures are not anticipated and there is no dermal exposure endpoint. Therefore, no residential exposures are applicable for the aggregate risk assessment.

Cumulative exposure. EPA has determined that cyprodinil along with pyrimethanil form a candidate common mechanism group (CMG). This group of pesticides is considered a candidate CMG because there is sufficient toxicological data to suggest a common pathway. The Agency conducted a screening-level cumulative risk assessment that indicates cumulative dietary and residential aggregate exposures for cyprodinil and pyrimethanil are below the agency's levels of concern. For further information, see the document titled ''Anilinopyrimidines. Cumulative Screening Risk Assessment'' in docket ID EPA–HQ–OPP–2020–0417. No further cumulative evaluation is necessary for cyprodinil. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/pesticide-cumulative-risk-assessment-framework.*

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor. See Unit III.D. of the July 21, 2016 rulemaking for a discussion of the Agency's rationale for that determination.

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

Acute dietary risks are below the Agency's level of concern of 100% of the aPAD; they are 7.7% of the aPAD for children 1 to 2 years old, the group with the highest exposure. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 86% of the cPAD for children 1 to 2 years old, the group with the highest exposure. There are no residential exposures expected, so the acute dietary risk estimate serves as the acute aggregate risk assessment and the chronic dietary risk estimate serves as the chronic aggregate risk assessment. Cyprodinil is classified as ''Not likely to be carcinogenic to humans'', therefore, quantification of cancer risk is not required.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to cyprodinil residues. More detailed information on this action can be found in the ''Cyprodinil. Human Health Risk Assessment to Support the Registration of the Proposed New Use on Sugar Apple; and Crop Group Conversions/Expansions to *Brassica,* Leafy Greens, Subgroup 4–16B; Celtuce; Fennel, Florence, Fresh Leaves and Stalk; Kohlrabi; Leaf Petiole Vegetable Subgroup 22B; Leafy Greens Subgroup 4–16A, Except Parsley, Fresh Leaves; Lemon/Lime Subgroup 10–10B; Tropical and Subtropical, Small Fruit, Inedible Peel, Subgroup 24A; and Vegetable, *Brassica,* Head and Stem, Group 5–16'' (hereafter ''the Cyprodinil Human Health Risk Assessment'') in docket ID EPA–HQ–OPP–2020–0417.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the July 21, 2016 rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

There are no Codex MRLs for residues in/on celtuce, Florence fennel, kohlrabi, members of the lemon/lime subgroup 10–10B, sugar apple, or members of the tropical and subtropical, small fruit, inedible peel, subgroup 24A; therefore, harmonization is not an issue for these commodities.

The U.S. tolerance for residues in/on crop subgroup 22B is harmonized with the Codex MRL for residues in/on celery, a member of crop subgroup 22B.

Codex has established various MRLs for residues in/on crop groups and crop subgroups with overlapping commodities included in crop subgroup 4–16B and crop group 5–16. EPA is not harmonizing the tolerances for residues in/on crop subgroup 4–16B and group 5–16 with the Codex MRLs because the petitioner has requested harmonization with Canadian MRLs rather than Codex MRLs since Canada is a major trading partner for U.S. growers of those commodities.

Codex has established MRLs for residues in/on leafy vegetables (except *Brassica* leafy vegetables) and herbs, which include commodities included in crop subgroup 4–16A, at different levels. The U.S. tolerance for residues in/on leafy greens subgroup 4–16A, except parsley, fresh leaves, is harmonized with the Codex MRL for residues in/on leafy vegetables (except *Brassica* leafy vegetables), which includes lettuce and spinach (the representative commodities for crop subgroup 4–16A) and some other leafy vegetables. The subgroup tolerances are supported by available residue data on the representative commodities and the consistency of labeled use patterns for commodities within subgroup 4–16A; therefore, EPA is leaving the subgroup intact rather than pull individual commodities out to harmonize with Codex.

C. Revisions to Petitioned-For Tolerances

Although the petitioner requested a tolerance for *Brassica,* leafy greens, subgroup 4–16B, except watercress, EPA is establishing the subgroup 4–16B tolerance without the exception. While EPA agrees that a separate tolerance on watercress is appropriate due to the difference in use patterns for *Brassica,* leafy greens and watercress, the existing separate tolerance for watercress will cover the residues in watercress resulting from use as directed on the label. Because that tolerance is already higher, it will cover residues and there is no need to exclude watercress from the subgroup.

V. Conclusion

Therefore, tolerances are established for residues of cyprodinil in or on *Brassica,* leafy greens, subgroup 4–16B at 10 ppm; Celtuce at 30 ppm; Fennel, Florence, fresh leaves and stalk at 30 ppm; Kohlrabi at 1 ppm; Leaf petiole vegetable subgroup 22B at 30 ppm; Leafy greens subgroup 4–16A, except parsley, fresh leaves at 50 ppm; Lemon/lime subgroup 10–10B at 0.6 ppm; Sugar apple at 4 ppm; Tropical and subtropical, small fruit, inedible peel, subgroup 24A at 2 ppm; and Vegetable, *Brassica,* head and stem, group 5–16 at 1 ppm. Additionally, the following existing tolerances are removed as unnecessary due to the establishment of the above tolerances: *Brassica,* head and stem, subgroup 5A; *Brassica,* leafy greens, subgroup 5B; Leaf petioles subgroup 4B; Leafy greens subgroup 4A; Lemon; Lime; Longan; Lychee; Spanish lime; and Turnip, greens.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: January 20, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter 1 as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.532, amend the table in paragraph (a)(1) by:

■ a. Designating the table as Table 1;

■ b. Removing the entry for ''*Brassica,* head and stem, subgroup 5A''.

■ c. Adding in alphabetical order the entry ''*Brassica,* leafy greens, subgroup 4–16B''.

■ d. Removing the entry for ''*Brassica,* leafy greens, subgroup 5B''.

■ e. Adding in alphabetical order the entries ''Celtuce''; ''Fennel, Florence, fresh leaves and stalk'' and ''Kohlrabi''.

■ f. Removing the entry for ''Leaf petioles subgroup 4B''.

■ g. Adding in alphabetical order the entry ''Leaf petiole vegetable subgroup 22B''.

■ h. Removing the entry for ''Leafy greens subgroup 4A''.

■ i. Adding in alphabetical order the entry ''Leafy greens subgroup 4–16A, except parsley, fresh leaves''.

■ j. Removing the entries for ''Lemon'' and ''Lime''.

■ k. Adding in alphabetical order the entry ''Lemon/lime subgroup 10–10B''.

■ l. Removing the entries for ''Longan''; ''Lychee''; and ''Spanish lime''.

■ m. Adding in alphabetical order the entries ''Sugar apple''; and ''Tropical and subtropical, small fruit, inedible peel, subgroup 24A''.

■ n. Removing the entry for ''Turnip, greens''.

■ o. Adding in alphabetical order the entry ''Vegetable, *Brassica,* head and stem, group 5–16''.

The additions read as follows:

§ 180.532 Cyprodinil; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Brassica, leafy greens, subgroup 4–16B	10

TABLE 1 TO PARAGRAPH (a)(1)—Continued

Commodity	Parts per million
* * * * *	
Celtuce	30
* * * * *	
Fennel, Florence, fresh leaves and stalk	30
* * * * *	
Kohlrabi	1
Leaf petiole vegetable subgroup 22B	30
Leafy greens subgroup 4–16A, except parsley, fresh leaves	50
Lemon/lime subgroup 10–10B	0.6
* * * * *	
Sugar apple	4
Tropical and subtropical, small fruit, inedible peel, subgroup 24A	2
Vegetable, *Brassica,* head and stem, group 5–16	1
* * * * *	

* * * * *

[FR Doc. 2022–01439 Filed 1–26–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2020–0715; FRL–8854–01–R3]

District of Columbia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the District of Columbia's Underground Storage Tank (UST) program submitted by the District of Columbia (District or State). This action also codifies EPA's approval of the District of Columbia's state program and incorporates by reference (IBR) those provisions of the District's regulations and statutes that EPA has determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities

under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective March 28, 2022, unless EPA receives significant negative comments opposing this action by February 28, 2022. If EPA receives significant negative comments opposing this action, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of March 28, 2022, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: thompson.khalia@epa.gov.*

Instructions: Direct your comments to Docket ID No. EPA–R03–UST–2020–0715.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The Federal website, *https://www.regulations.gov,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information might not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Publicly available materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Khalia Thompson, (215) 814–3348, *thompson.khalia@epa.gov,* RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to the District of Columbia's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

Section 9004 of RCRA authorizes EPA to approve state underground storage tank (UST) programs to operate in lieu of the Federal UST program. EPA may approve a state program if the state demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the state program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the state program is ''no less stringent'' than the Federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as the District of Columbia (a jurisdiction recognized as a ''State'' pursuant to section 1004(31) of RCRA) that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling Federal or state statutory or regulatory authority is changed and EPA determines a revision is required. In 2015, EPA revised the Federal UST regulations and determined that states must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On November 12, 2020, in accordance with 40 CFR 281.51, the District of Columbia submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). The District's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations. As required by 40 CFR 281.20, the State Application contains the following: A transmittal letter requesting program approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of EPA and the implementing agency; an Attorney General's statement in accordance with 40 CFR 281.24 certifying to applicable State authorities; and copies of all relevant State statutes and regulations. EPA has reviewed the State Application and determined that the revisions to the District of Columbia's UST program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the District of Columbia's program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants the District of Columbia final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this preamble.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in the District of Columbia, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrently with a proposed rulemaking because EPA views this as a noncontroversial action and anticipates no significant negative comment. EPA is providing an opportunity for public comment now.

E. What happens if EPA receives comments that oppose this action?

Along with this direct final rule, EPA is publishing a separate document in the

''Proposed Rules'' Section of this **Federal Register** that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives significant negative comments that oppose this approval, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has the District of Columbia previously been approved?

On July 9, 1997, the EPA finalized a rule approving the District of Columbia's UST program, effective August 8, 1997 (62 FR 36698), to operate in lieu of the Federal program. On May 4, 1998, EPA corrected the effective date to May 4, 1998 (63 FR 24453). EPA has not codified the District of Columbia's approved program prior to this action.

G. What changes is EPA approving with this action?

On November 12, 2020, in accordance with 40 CFR 281.51, the District of Columbia submitted a complete application for final approval of its UST program revisions adopted on January 24, 2020, effective February 21, 2020. EPA has reviewed the District's UST program requirements and determined that such requirements are no less stringent than the Federal regulations and that the criteria set forth in 40 CFR part 281 subpart C are met. As part of the State Application, the Attorney General for the District of Columbia certified that the laws and regulations of the District of Columbia provide adequate authority to carry out a program that is ''no less stringent'' than the Federal requirements in 40 CFR part 281. EPA is relying on this certification in addition to the analysis submitted by the District in making our determination. EPA now makes an immediate final decision, subject to receipt of any significant negative written comments that oppose this action, that the District of Columbia's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants the District of Columbia final approval for the following program changes:

Required Federal element	Implementing State authority
40 CFR 281.30, New UST Systems and Notification	20 DCMR 5502.2, 5507, 5600, 5602.1, 5700–5702, 5704–5706, 5803, 6002.2, 6003.6, 6011.2.
40 CFR 281.31, Upgrading Existing UST Systems	20 DCMR 5507.7, 5700, 5800–5804.
40 CFR 281.32, General Operating Requirements	20 DCMR 5502.2(c), 5601.6, 5602, 5603.1, 5603.4, 5604, 5801, 5900–5904, 6001.
40 CFR 281.33, Release Detection	20 DCMR 5507.2–.3, 5702.4, 5704.5, 6000–6013.
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	20 DCMR 6201–6203, 6601.1.
40 CFR 281.35, Release Response and Corrective Action	20 DCMR 6202.4, 6203–6211.
40 CFR 281.36, Out-of-service Systems and Closure	20 DCMR 5507.13, 6100–6102.
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	20 DCMR 6700–6715.
40 CFR 281.38, Lender Liability	20 DCMR 6200.4.
40 CFR 281.39, Operator Training	20 DCMR 5602.3, 6502–6503.

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The District of Columbia's lead implementing agency, the Department of Energy and Environment (DOEE), has broad statutory and regulatory authority with respect to USTs to regulate installation, operation, maintenance, closure and UST releases, and to issue orders. The statutory and regulatory authority is found in the District of Columbia Code at Sections 8–113.01–12 and in the District of Columbia Municipal Regulations (DCMR) at 20 DCMR Sections 5500–7099.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following District requirements are considered ''broader in scope'' than the Federal program:

- The District may regulate substances designated by the Mayor in addition to those regulated under the Federal program. DC Code § 8–113.01(7)(C).
- The District regulates tanks that store heating oil for consumptive use on the premises where stored under 20 DCMR §§ 5503.1–.2, 5703. Such tanks are excluded from the Federal definition of underground storage tanks.
- The District regulates any UST associated with equipment or machinery that contains regulated substances for operational purposes (such as hydraulic lift tanks and electrical equipment tanks) and any UST system with a capacity of one hundred ten (110) gallons or less under 20 DCMR § 5504. Such tanks and tank systems are excluded from the requirements of the Federal regulations.
- The District regulates persons who are not owners or operators of USTs. *See, e.g.,* DC Code § 8–113.01(9)(A)(ii)–(v), .02(f) and (g), 113.03, 113.08(d), and 20 DCMR Chapters 56, 59, 61, 62, and 70.
- The District requires owners or operators of USTs undergoing installation, upgrade, repair or closure to obtain a building permit prior to such activity under 20 DCMR §§ 5500.2, 5603.5, 6210.8 and to comply with fire and construction codes under 5500.1(c) and (d), respectively.
- The District charges fees for registration, certification, installation, closure-in-place or removal. DC Code § 8–113.06(c), (d), 8–113.12(a)(9), 20 DCMR §§ 5601, 5605, and 6501.
- The District requires contractor licensure and certification of persons other than installers. DC Code § 8–113.06(a), 20 DCMR §§ 6500.1–.4, .6–.10, 6501.

In accordance with 40 CFR 281.12(a)(3)(ii), the additional coverage listed above is not part of the federally-approved program and is not federally enforceable.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved program into the Code of Federal Regulations (CFR). Section 9004(b) of RCRA, as amended, allows EPA to approve state UST programs to operate in lieu of the Federal program. EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of District of Columbia's UST program?

EPA has not previously incorporated by reference the District of Columbia's UST program. In this document, EPA is amending 40 CFR 282.58 to include the approved revised program.

C. What codification decisions has EPA made in this rule?

Incorporation by reference: In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the District of Columbia statutes and regulations described in the amendments to 40 CFR part 282 set forth below. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 3 office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

One purpose of this rule is to codify the District of Columbia's approved UST program. The codification reflects the State program that will be in effect at the time EPA's approved revisions to the District's UST program addressed in this direct final rule become final. If, however, EPA receives any significant negative comment opposing the proposed rulemaking then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. This rule incorporates by reference the District of Columbia's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved District of Columbia program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the District of Columbia program.

EPA is incorporating by reference the District of Columbia approved UST program in 40 CFR 282.58. Section 282.58(d)(1)(i)(A) and (B) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.58 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of District of Columbia's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. If EPA determines it will take such actions in the District of Columbia, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State's authorized analogs to these provisions. Therefore, EPA is not incorporating by reference such approved District of Columbia's procedural and enforcement authorities. Section 282.58(d)(1)(ii) of 40 CFR lists those approved District of Columbia authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Such provisions are not part of the RCRA Subtitle I program because they are ''broader in scope'' than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not a part of the federally-approved program. As a result, State provisions that are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.58(d)(1)(iii) lists for reference and clarity the District of Columbia's statutory and regulatory provisions that are ''broader in scope'' than the Federal program and which are not, therefore, part of the approved program being codified in this action. Provisions that are ''broader in scope'' cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to the District of Columbia's UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). Currently there are no federally recognized tribes in the District of Columbia. Therefore, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

C. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

E. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

F. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State's application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

G. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

H. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

I. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, because it approves pre-existing State rules that are no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law. For these reasons, this rule is not subject to Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). However, this action will be effective March 28, 2022 because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control, Water supply.

Adam Ortiz,

Regional Administrator, EPA Region 3.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

■ 2. Add § 282.58 to read as follows:

§ 282.58 District of Columbia State-Administered Program.

(a) The District of Columbia is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the District of Columbia's Department of Energy and Environment's predecessor agency, the Department of Consumer and Regulatory Affairs, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281 of this chapter. EPA approved the District of Columbia underground storage tank program on July 9, 1997, and approval was effective on May 4, 1998. A subsequent program revision application was approved by EPA and became effective on March 28, 2022.

(b) The District of Columbia has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, the District of Columbia must revise its approved program to adopt new changes to the Federal Subtitle I program which

makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If the District of Columbia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) The District of Columbia has final approval for the following elements of its program application originally submitted to EPA and approved on July 9, 1997, and effective May 4, 1998, and the program revision application approved by EPA, effective on March 28, 2022.

(1) *State statutes and regulations*—(i) *Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the District of Columbia's regulations and statutes that are incorporated by reference in this paragraph from District of Columbia's Underground Storage Tank Branch, Toxic Substances Division, Department of Energy and Environment, 1200 First Street NE, 5th Fl., Washington DC 20002 (phone number 202–535–2326). You may inspect all approved material at the EPA Region 3 office, 1650 Arch Street, Philadelphia, PA 19103–2029 (phone number 215–814–3348) or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(A) ''District of Columbia Statutory Requirements Applicable to the Underground Storage Tank Program,'' March 1991.

(B) ''District of Columbia Regulatory Requirements Applicable to the Underground Storage Tank Program,'' February 2020.

(ii) *Legal basis.* EPA evaluated the following statutes and regulations, which are part of the approved program, but which are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(*1*) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1, Subchapter VII, Underground Storage Tank Management Act, Sections: 8–113–04; 8–113.06(a); 8–113.07; 8–113.08; 8–113.09; 8–113.10; 8–113.12.

(*2*) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1, Subchapter II, Water Pollution Control, Sections: 8–103.10(c); 8–103.20.

(*3*) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1A, Subchapter I, General, Sections: 8–151.07; 8–151.08(6).

(B) The regulatory provisions include:

(*1*) District of Columbia Municipal Regulations, Title 20, Chapters 55–67 and 70, Underground Storage Tank Regulations, Sections: 5501.1 as to regulated substance delivery person or company; 5601.7; 5800.3; 6300–6302; 6600–6605, including 6602.7 (Delivery Prohibition).

(*2*) District of Columbia Municipal Regulations, Title 16, Consumers, Commercial Practices, & Civil Infractions—Chapters 32 and 40; Chapter 32, Section 3201; Chapter 40, Section 4008.

(*3*) District of Columbia State Rules—Superior Court Rules of Civil Procedure—IV. Parties, Super. Ct. Civ. R. 24—Intervention.

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are ''broader in scope'' than the Federal program, are not part of the approved program, and are not incorporated by reference herein. These provisions are not federally enforceable:

(A) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1, Subchapter VII, Underground Storage Tank Management, Sections: 8–113.01(7)(C) and (9)(A)(ii)–(v); 8–113.02(f) and (g) insofar as (g) includes persons who are not owners or operators of underground storage tanks; 8–113.03(a) insofar as includes persons who are not owners or operators of underground storage tanks; 8–113.06(b)–(d) as to fees.

(B) District of Columbia Municipal Regulations, Title 20, Chapters 55–67 and 70, Underground Storage Tank Regulations, Sections: 5500.1(c)–(d); 5500.2; 5501.1 as to persons who are not owners or operators of underground storage tanks; 5503.1–.2 insofar as regulates tanks that store heating oil for use on the premises where stored; 5504; 5600.1(b); 5601.1 insofar as regulates tanks that store heating oil for use on the premises where stored; 5601.2–.3 insofar as requires payment of fees; 5603.5 insofar as requires permits; 5604 insofar as includes persons who are not owners or operators of underground storage tanks, 5604.3–.4; 5605; 5606; 5700.4, .7, and .8(b); 5703; 5706.1 insofar as requires compliance with District fire code; 5900.1–.3, .7, as to ''agent in charge,'' .10 as to ''responsible party; 5904.5; 6003.4; 6100.4; 6202.2; 6210.8 insofar as requires permits; 6212; 6500.1–.4, .6–.10; 6501; 7099.1 as to the definitions of ''agent in charge,'' ''authorized agent,'' ''voluntary remediating party,'' and ''voluntary remediation,'' and the definitions of ''real property owner'' and ''responsible party'' insofar as each definition includes persons who are not owners or operators of underground storage tanks.

(2) *Statement of legal authority.* ''Attorney General's Statement'' signed by the Attorney General on September 18, 2020, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The ''Demonstration of Adequate Enforcement Procedures'' submitted as part of the program revision application for approval on November 12, 2020, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the program revision application for approval on November 12, 2020, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 3 and the District of Columbia Department of Energy and the Environment, signed by the EPA Regional Administrator on November 25, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

■ 3. Amend appendix A to part 282 by adding the entry for District of Columbia to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

District of Columbia

(a) The statutory provisions include:

(1) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1,

Subchapter VII, Underground Storage Tank Management, sections 8–113.01–113.12

Section 8–113.01. Definitions, *except (7)(C) and (9)(A)(ii)–(v)*
Section 8–113.02. Notification, *except (f)*
Section 8–113.03. Release notification requirements, *except (a) as to persons who are not owners or operators of underground storage tanks*
Section 8–113.06. Certification, registration and licensing, *except (b) as to fees; (c)–(d)*

(2) [Reserved]

(b) The regulatory provisions include:

(1) District of Columbia Municipal Regulations, Title 20, Chapters 55–67 and 70, Underground Storage Tanks

Chapter 55 Underground Storage Tanks—General Provisions

Section 5500 Compliance with District Laws, *except 5500.1(c)–(d); 5500.2*
Section 5501 Applicability of UST regulations, *except 5501.1 as to persons who are not owners or operators of underground storage tanks*
Section 5502 Partial Applicability of UST Regulations to Particular UST Systems
Section 5503 Partial Applicability of UST Regulations to Heating Oil Tanks, *except 5503.1–.2*
Section 5505 Applicability to Emergency Generator UST Systems
Section 5506 Industry Codes and Standards
Section 5507 Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

Chapter 56 Underground Storage Tanks—Notification, Registration, Recordkeeping, and Public Information

Section 5600 Notice of the Existence, Use, Purchase, Sale or Change in Service of an UST System, *except as to persons who are not owners or operators of underground storage tanks; 5600.1(b)*
Section 5601 Registration, *except 5601.1 as to tanks that store heating oil for use on the premises where stored; 5601.2–.3 as to payment of fees; 5601.10 as to persons who are not owners or operators of underground storage tanks*
Section 5602 Recordkeeping and Reports
Section 5603 Notice of Installation, Removal, Closure-in-Place, Repair, Upgrade, and Testing, *except 5603.5 insofar as requires permits*
Section 5604 Notice of Sale of Real Property, *except as to persons who are not owners or operators of underground storage tanks, 5604.3–.4*
Section 5607 Public Record Information

Chapter 57 Underground Storage Tanks—New Tank Performance Standards

Section 5700 Existing and New UST Systems—General Provisions, *except 5700.4, .7, .8(b)*
Section 5701 New Petroleum UST Systems
Section 5702 New Hazardous Substance UST Systems
Section 5704 New Piping for UST Systems
Section 5705 Spill and Overfill Prevention Equipment for New and Upgraded UST Systems
Section 5706 Installation of New UST Systems, *except 5706.1 insofar as requires compliance with District fire codes*

Chapter 58 Underground Storage Tanks—Operation and Maintenance of USTs

Section 5800 Existing UST System Upgrades
Section 5801 Tank Upgrades
Section 5802 Existing UST System Piping Upgrades
Section 5803 Spill and Overfill Prevention Equipment Upgrades
Section 5804 Tank Tightness Testing upon Upgrade

Chapter 59 Underground Storage Tanks—Operation and Maintenance of USTs

Section 5900 Spill and Overfill Control, *except 5900.1–.3, .7 as to ''agent in charge;'' .10 as to ''responsible party''*
Section 5901 Tank Corrosion Protection
Section 5902 Repair or Replacement of UST Systems
Section 5903 Compatibility
Section 5904 Walkthrough Inspections, *except 5904.5*

Chapter 60 Underground Storage Tanks—Release Detection

Section 6000 Release Detection—General Provisions
Section 6001 Release Detection Recordkeeping
Section 6002 Release Detection for Hazardous Substance UST Systems
Section 6003 Release Detection for Petroleum UST System Tanks, *except 6003.4*
Section 6004 Release Detection for Petroleum UST System Piping
Section 6005 Inventory Control and Statistical Inventory Reconciliation
Section 6006 Manual Tank Gauging
Section 6007 Tank Tightness Testing
Section 6008 Automatic Tank Gauging
Section 6009 Vapor Monitoring
Section 6010 Groundwater Monitoring
Section 6011 Interstitial Monitoring
Section 6012 Statistical Inventory Reconciliation
Section 6013 Other Methods of Release Detection

Chapter 61 Underground Storage Tanks—Closure

Section 6100 Temporary Closure, *except 6100.4*
Section 6101 Permanent Closure and Change-In-Service
Section 6102 Previously Closed UST Systems
Section 6103 Closure Records

Chapter 62 Underground Storage Tanks—Reporting of Releases, Investigation, Confirmation, Assessment, and Corrective Action

Section 6200 Obligations of Responsible Parties—Releases, Spills, and Overfills
Section 6201 Reporting and Cleanup of Spills and Overfills
Section 6202 Reporting of Releases of Regulated Substances, *except 6202.2*
Section 6203 Site Investigation, Confirmation of Release, Initial Abatement, and Initial Site Assessment
Section 6204 Removal of Free Product
Section 6205 Comprehensive Site Assessment
Section 6206 Risk-Based Corrective Action (RBCA) Process
Section 6207 Corrective Action Plan and Its Implementation
Section 6208 Tier 0 Standards
Section 6209 Tiers 1 and 2 Standards
Section 6210 No Further Action and Case Closure Requirements, *except 6210.8 insofar as requires permits*
Section 6211 Public Participation in Corrective Action

Chapter 64 Underground Storage Tanks—Corrective Action by the District and Cost Recovery

Section 6400 Corrective Action by the District
Section 6401 Cost Recovery

Chapter 65 Underground Storage Tanks—Licensing, Certification, Operator Requirements, and Operator Training

Section 6500 Licensing and Certification of UST System Installers, Removers, Testers, and Technicians, *except 6500.1–.4, .6–.10*
Section 6502 Operator Designation
Section 6503 Operator Training and Training Program Approval

Chapter 67 Underground Storage Tanks—Financial Responsibility

Section 6700 Petroleum UST Systems
Section 6701 Financial Responsibility Mechanisms
Section 6702 Financial Responsibility Records and Reports
Section 6703 Financial Test of Self-Insurance
Section 6704 Financial Test of Self-Insurance: Test A
Section 6705 Financial Test of Self-Insurance: Test B
Section 6706 Guarantees
Section 6707 Insurance and Risk Retention Group Coverage
Section 6708 Surety Bonds
Section 6709 Letter of Credit
Section 6710 Private Trust Funds
Section 6711 Standby Trust Funds
Section 6712 Drawing on Financial Assurance Mechanism
Section 6713 Replenishment of Guarantees, Letters of Credit, or Surety Bonds
Section 6714 Cancellation or Non-Renewal of Financial Assurance
Section 6715 Bankruptcy or Incapacity
Appendix 67–1 Certification of Financial Responsibility
Appendix 67–2 Financial Test of Self Insurance Letter From Chief Financial Officer
Appendix 67–3 Guarantee
Appendix 67–4 Certificate of Insurance
Appendix 67–5 Endorsement
Appendix 67–6 Performance Bond
Appendix 67–7 Irrevocable Standby Letter of Credit
Appendix 67–8 Trust Agreement
Appendix 67–9 Certification of Valid Claim

Chapter 70 Underground Storage Tanks—Definitions

Section 7099 Definitions, *except 7099.1 the definitions of ''agent in charge,'' ''authorized agent,'' ''voluntary remediating party,'' and ''voluntary remediation'' and the definitions of ''real property owner'' and ''responsible party'' insofar as each definition includes persons*

who are not owners or operators of underground storage tanks

(2) [Reserved]

* * * * *

[FR Doc. 2022–01432 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; Changes to Medicare Graduate Medical Education Payments for Teaching Hospitals; Changes to Organ Acquisition Payment Policies

Correction

In rule document 2021–27523 beginning on page 73416 in the issue of Monday, December 27, 2021, make the following correction:

§ 413.77 [Corrected]

■ On page 73513, in the first column, in paragraph (A), in the last line ''after <SECTION><SECTNO>; or'' should read ''after December 27, 2021; or''.

[FR Doc. C1–2021–27523 Filed 1–26–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 75

RIN 0991–AC16

Grants Regulation; Removal of Non-Discrimination Provisions and Repromulgation of Administrative Provisions Under the Uniform Grant Regulation

AGENCY: Assistant Secretary for Financial Resources (ASFR), Health and Human Services (HHS or the Department).

ACTION: Notification; postponement of effectiveness.

SUMMARY: The U.S. District Court for the District of Columbia in *Facing Foster Care et al.* v. *HHS,* 21–cv–00308 (DDC Feb. 2, 2021), has postponed the effectiveness of portions of the final rulemaking amendments to the Uniform Administrative Requirements, promulgated on January 12, 2021. Those provisions are now effective April 18, 2022.

DATES: Pursuant to court order, the effectiveness of the final rule published January 12, 2021, at 86 FR 2257, is postponed until April 18, 2022.

FOR FURTHER INFORMATION CONTACT: Johanna Nestor at *Johanna.Nestor@hhs.gov* or 202–205–5904.

SUPPLEMENTARY INFORMATION: On January 12, 2021, the Department issued amendments to and repromulgated portions of the Uniform Administrative Requirements, 45 CFR part 75. 86 FR 2257. That rule repromulgated provisions of part 75 that were originally published late in 2016. It also made amendments to 45 CFR 75.300(c) and (d).

Specifically, the rule amended paragraph (c), which previously provided that it is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. The paragraph further provided that recipients must comply with the public policy requirement in the administration of programs supported by HHS awards. The rule amended paragraph (c) to provide that it is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by Federal statute.

Additionally, the rule amended paragraph (d), which previously provided that in accordance with the Supreme Court decisions in *United States* v. *Windsor* and in *Obergefell* v. *Hodges,* all recipients must treat as valid the marriages of same-sex couples. The paragraph further provided that it did not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage. The rule amended paragraph (d) to provide that HHS will follow all applicable Supreme Court decisions in administering its award programs.

On February 2, the portions of rulemaking amendments to § 75.300 (and a conforming amendment at § 75.101(f)) were challenged in the U.S. District Court for the District of Columbia. *Facing Foster Care et al.* v. *HHS,* 21–cv–00308 (D.D.C. filed Feb. 2, 2021). On February 9, the court postponed, pursuant to 5 U.S.C. 705, the effective date of the challenged portions of the rule by 180 days, until August 11, 2021.[1] On August 5, the court again postponed the effective date of the rule until November 9, 2021.[2] On November 3, the court further postponed the effective date of the rule until January 17, 2022.[3] On December 27, the court further postponed the effective date of the rule until April 18, 2022.[4] The Department is issuing this notification to apprise the public of the court's order.

* * * * *

Xavier Becerra,

Secretary.

[FR Doc. 2022–01602 Filed 1–26–22; 8:45 am]

BILLING CODE 4151–19–P

[1] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Feb. 2, 2021) (order postponing effective date), ECF No. 18.

[2] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Aug. 5, 2021) (order postponing effective date), ECF No. 23.

[3] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Nov. 3, 2021) (order postponing effective date), minute order.

[4] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Dec. 27, 2021) (order postponing effective date and holding the case in abeyance), ECF No. 30.

Proposed Rules

Federal Register
Vol. 87, No. 18
Thursday, January 27, 2022

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC–21–0007]

RIN 0563–AC75

Common Crop Insurance Regulations; Apple Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is extending the comment period for an additional 60 days to provide the public more time to provide comments on the proposed rule to amend the Common Crop Insurance Regulations, Apple Crop Insurance Provisions. The additional comment period will end on April 15, 2022.

DATES: The comment date for the proposed rule published December 16, 2021, at 86 FR 71396 is extended. We will consider comments received by April 15, 2022.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by either of the following methods, although FCIC prefers that you submit comments electronically through the Federal eRulemaking Portal:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID FCIC–21–0007. Follow the instructions for submitting comments.
- *Mail:* Director, Product Administration and Standards Division, Risk Management Agency (RMA), U.S. Department of Agriculture, P.O. Box 419205, Kansas City, MO 64141–6205. In your comment, specify docket ID FCIC–21–0007.
- Comments will be available for viewing online at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7829; or email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: FCIC is extending the comment period on the Apple proposed rule that published on December 16, 2021 (86 FR 71396–71406). The comment period was initially scheduled to close on February 14, 2022. FCIC is extending the comment period and will accept comments received by April 15, 2022.

Based on several requests received during the initial comment period, FCIC is giving the public additional time to provide comments on the proposed rule. This extension allows interested persons additional time to familiarize themselves with the proposed rule and its implications and to prepare and submit comments regarding the proposed rule.

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2022–01566 Filed 1–26–22; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0014; Project Identifier AD–2021–00114–A]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. (Type Certificate Previously Held by Cessna Aircraft 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 certain Textron Aviation Inc. (Textron) Model 120 and 140 airplanes and all Model 140A airplanes. This proposed AD was prompted by reports of seat belt center bracket failures from overstress. This proposed AD would require determining if the seat belt center bracket is made of steel and replacing any non-steel brackets. 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 March 14, 2022.

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

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

For service information identified in this NPRM, contact Textron Aviation Inc., One Cessna Blvd., Wichita, KS 67215; phone: (316) 517–5800; email: *customercare@txtav.com;* website: *https://support.cessna.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0014; 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.

FOR FURTHER INFORMATION CONTACT: Bobbie Kroetch, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4155; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0014; Project Identifier AD–2021–00114–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the

proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Bobbie Kroetch, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received multiple reports of the seat belt center bracket failing on Textron (Type Certificate previously held by Cessna Aircraft Company) Model 120 and 140 airplanes, including a 2014 fatal accident where a Model 140 airplane nosed over on landing, and the seat belt center bracket failed. To address that accident, the FAA issued Special Airworthiness Information Bulletin CE–15–13, dated April 15, 2015, recommending operators replace aluminum brackets with steel brackets. In 2020, another fatal accident occurred when a Model 140 airplane nosed over during an aborted takeoff, and the seat belt center bracket failed. A metallurgical analysis determined the part failed due to overstress. There have been four additional occurrences of seat belt center bracket failure on Model 120 and 140 airplanes, two of which resulted in occupant injury.

Analysis of the failures determined the original aluminum seat belt center bracket does not have sufficient strength and can fail due to overstress during incidents and accidents. The aluminum brackets and the steel brackets both have the same part number (part number 0425132). Although Model 140A airplanes were manufactured with steel seat belt center brackets, owners of Model 140A airplanes could have replaced the steel bracket with an aluminum bracket; therefore, the FAA determined the unsafe condition also exists on Model 140A airplanes.

This condition, if not addressed, could result in failure of the seat belt center bracket, which could lead to failure of the seat belt restraint system and injury to occupants.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed Cessna Single Engine Service Bulletin SEB–25–03, dated February 17, 2015. This service information specifies the location of the affected seat belt center bracket. This service information also contains a figure depicting the location of the seatbelt center bracket.

Proposed AD Requirements in This NPRM

This proposed AD would require determining if the seat belt center bracket material is made of steel. An owner/operator (pilot) may perform this check and must enter compliance with the applicable paragraph of this AD in the aircraft maintenance records in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). A pilot may perform this action because it involves a one-time check to determine material. This check is an exception to the FAA's standard maintenance regulations.

This proposed AD would also require replacing any non-steel bracket with a steel bracket and would prohibit installing a non-steel bracket on any airplane.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2,033 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Determine material of the seat belt center bracket.	0.25 work-hour × $85 per hour = $21.25	Not applicable	$21.25	$43,201.25

The FAA estimates the following costs to do any necessary replacements that may be required. The agency has no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Replace any non-steel seat belt center bracket	0.75 work-hour × $85 per hour = $63.75	$79	$142.75

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Textron Aviation Inc. (Type Certificate previously held by Cessna Aircraft Company): Docket No. FAA–2022–0014; Project Identifier AD–2021–00114–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 14, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Textron Aviation Inc. (Type Certificate previously held by Cessna Aircraft Company) Model 120 and 140 airplanes, serial numbers (S/Ns) 10070 through 15075, and Model 140A airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2510, Flight Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by reports of seat belt center bracket failures from overstress. The FAA is issuing this AD to prevent failure of the seat belt center brackets. The unsafe condition, if not addressed, could result in failure of the seat belt center bracket, which could lead to failure of the seat belt restraint system and injury to occupants.

(f) Compliance

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

(g) Required Actions

(1) Within 12 months after the effective date of this AD, determine if the seatbelt center bracket located between the two seats is made of steel by placing a magnet on the center of the bracket. This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417. This authority is not applicable to aircraft being operated under 14 CFR part 119.

(i) If the seat belt center bracket is made of steel, no additional action is required.

(ii) If the seat belt center bracket is not made of steel, within 12 months after the effective date of this AD, replace with a steel part number (P/N) 0425132 seat belt center bracket.

(2) As of the effective date of this AD, do not install a seat belt center bracket P/N 0425132 that is not made of steel on any airplane.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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 (i) of this AD.

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

(i) Related Information

For more information about this AD, contact Bobbie Kroetch, Aviation Safety Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4155; email: *bobbie.kroetch@faa.gov* or *Wichita-COS@faa.gov.*

Issued on January 20, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01541 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0016; Project Identifier MCAI–2021–00945–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., 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 certain Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by a report that the nose wheel steering selector valve (SSV) can be slow to deactivate under low temperature conditions. This proposed AD would require replacing the affected nose wheel SSV with a redesigned nose wheel SSV, and performing an operational test of the nose wheel SSV and nose wheel steering control system. This proposed AD would also prohibit the installation of a certain nose wheel SSV. 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 March 14, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

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

For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0016; 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.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0016; Project Identifier MCAI–2021–00945–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–29, dated August 18, 2021 (TCCA AD CF–2021–29) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–100–1A10 airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0016.

This proposed AD was prompted by a report that the nose wheel SSV can be slow to deactivate under low temperature conditions. The FAA is proposing this AD to address a slow nose wheel SSV deactivation, which, in combination with an un-commanded steering input, could lead to a delayed transition to free castor mode and result in an aircraft runway excursion. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 100–32–35, dated March 30, 2021, and Service Bulletin 350–32–011, dated March 30, 2021. This service information describes procedures for replacing the existing nose wheel SSV (part number 41130–107) with a redesigned nose wheel SSV (part number 41130–111), and performing an operational test of the nose wheel SSV and nose wheel steering control system. These documents are distinct since they apply to different airplane configurations. 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

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 and service information 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 on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 660 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	$5,793	$6,133	$4,047,780

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:

Bombardier, Inc.: Docket No. FAA–2022–0016; Project Identifier MCAI–2021–00945–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 14, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, serial numbers 20003 through 20892 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a report that the nose wheel steering selector valve (SSV) can be slow to deactivate under low temperature conditions. The FAA is issuing this AD to address a slow nose wheel SSV deactivation, which, in combination with an un-commanded steering input, could lead to a delayed transition to free castor mode and result in an aircraft runway excursion.

(f) Compliance

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

(g) Replacement of Nose Wheel SSV

Within 36 months after the effective date of this AD: Replace the nose wheel SSV part number 41130–107 with the redesigned nose wheel SSV part number 41130–111; and before further flight, perform an operational test of the nose wheel SSV and nose wheel steering control system; in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) and (2) of this AD. If any test fails, do applicable corrective actions and repeat the test until the part passes the test.

(1) Bombardier Service Bulletin 100–32–35, dated March 30, 2021.

(2) Bombardier Service Bulletin 350–32–011, dated March 30, 2021.

(h) Parts Installation Prohibition

Do not install nose wheel SSV, part number 41130–107 on any airplane as of the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For airplanes that have nose wheel SSV, part number 41130–107 installed as of the effective date of this AD: After replacement of nose wheel SSV as required by paragraph (g) of this AD.

(2) For airplanes that, as of the effective date of this AD, do not have nose wheel SSV, part number 41130–107 installed: As of the effective date of this AD.

(i) No Reporting Requirement

Although the service information specified in paragraphs (g)(1) and (2) of this AD 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, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–29, dated August 18, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0016.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410,

Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on January 20, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01477 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM22–3–000]

Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to direct the North American Electric Reliability Corporation to develop and submit for Commission approval new or modified Reliability Standards that require internal network security monitoring within a trusted Critical Infrastructure Protection networked environment for high and medium impact Bulk Electric System Cyber Systems.

DATES: Comments are due March 28, 2022.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by U.S. Postal Service mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service only:* Addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426.

○ *For delivery via any other carrier (including courier):* Deliver to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Cesar Tapia (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6559, *cesar.tapia@ferc.gov*

Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6840, *kevin.ryan@ferc.gov*

Milena Yordanova (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6194, *milena.yordanova@ferc.gov*

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),[1] the Commission proposes to direct the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), to develop new or modified Reliability Standards that require network security monitoring internal to a Critical Infrastructure Protection (CIP) networked environment (internal network security monitoring or INSM) for high and medium impact Bulk Electric System (BES) Cyber Systems.[2] INSM is a subset of network security monitoring that is applied within a ''trust zone,'' [3] such as an Electronic Security Perimeter (ESP),[4] and is designed to address situations where vendors or individuals with authorized access are considered secure and trustworthy but could still introduce a cybersecurity risk to a high or medium impact BES Cyber System.

2. Although the currently effective CIP Reliability Standards offer a broad set of cybersecurity protections, they do not address INSM. This omission constitutes a gap in the CIP Reliability Standards. Including INSM requirements in the CIP Reliability Standards would ensure that responsible entities maintain visibility over communications between networked devices within a trust zone (*i.e.,* within an ESP), not simply monitor communications at the network perimeter access point(s), *i.e.,* at the boundary of an ESP as required by the current CIP requirements. In the event of a compromised ESP, improving visibility within a network would increase the probability of early detection of malicious activities and would allow for quicker mitigation and recovery from an attack. In addition to improved incident response capabilities and situational awareness, INSM also contributes to better vulnerability assessments within an ESP, all of which support an entity's cybersecurity defenses and could reduce the impact of cyberattacks.

3. While the currently effective CIP Reliability Standards do not require INSM, NERC has recognized the proliferation and usefulness of network monitoring technology on the BES. For example, on January 4, 2021, NERC issued a Compliance Monitoring and Enforcement Program (CMEP) Practice Guide addressing Network Monitoring Sensors, Centralized Collectors, and Information Sharing.[5] NERC explained that the CMEP Practice Guide was developed in response to a U.S. Department of Energy (DOE) initiative ''to advance technologies and systems that will provide cyber visibility, detection, and response capabilities for [industrial control systems] of electric utilities.'' [6] As discussed below, in view

[1] 16 U.S.C. 824o(d)(5).

[2] Reliability Standard CIP–002–5.1a (BES Cyber System Categorization) sets forth criteria that registered entities apply to categorize BES Cyber Systems as high, medium, or low depending on the adverse impact that loss, compromise, or misuse of those BES Cyber Systems could have on the reliable operation of the BES. The impact level (*i.e.,* high, medium, or low) of BES Cyber Systems, in turn, determines the applicability of security controls for BES Cyber Systems that are contained in the remaining CIP Reliability Standards (*i.e.,* Reliability Standards CIP–003–8 to CIP–013–1).

[3] A trust zone is defined as a ''discrete computing environment designated for information processing, storage, and/or transmission that share the rigor or robustness of the applicable security capabilities necessary to protect the traffic transiting in and out of a zone and/or the information within the zone.'' U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency (CISA), *Trusted internet Connections 3.0: Reference Architecture,* at 2 (July 2020), *https://www.cisa.gov/sites/default/files/publications/CISA_TIC%203.0%20Vol.%202%20Reference%20Architecture.pdf.*

[4] The NERC Glossary defines an ESP as ''the logical border surrounding a network to which BES Cyber Systems are connected using a routable protocol.'' NERC, *Glossary of Terms Used in NERC Reliability Standards* (June 28, 2021), *https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.*

[5] NERC, *ERO Enterprise CMEP Practice Guide: Network Monitoring Sensors, Centralized Collectors, and Information Sharing* (June 4, 2021), *https://www.nerc.com/pa/comp/guidance/CMEPPracticeGuidesDL/CMEP%20Practice%20Guide%20-%20Network%20Monitoring%20Sensors.pdf* (CMEP Practice Guide).

[6] *Id.* at 1.

of these and other ongoing efforts to improve network monitoring, we believe that there is a sufficient basis for a directive to NERC to require INSM in the CIP Reliability Standards for high and medium impact BES Cyber Systems.

4. We seek comments on all aspects of the proposed directive to NERC to modify the CIP Reliability Standards to require INSM for high and medium impact BES Cyber Systems. The proposed directive centers on high and medium impact BES Cyber Systems in order to improve visibility within networks containing BES Cyber Systems whose compromise could have a significant impact on the reliable operation of the BES. However, because low impact BES Cyber Systems have fewer security controls than high and medium impact BES Cyber Systems, we also seek comments on the usefulness and practicality of implementing INSM to detect malicious activity in networks with low impact BES Cyber Systems, including any potential benefits, technical barriers and associated costs.

5. Upon review of the filed comments, the Commission will consider whether to broaden the directives in the final rule to direct NERC to require INSM in the CIP Reliability Standards for low impact BES Cyber Systems or a defined subset of low impact BES Cyber Systems.

I. Background

A. Section 215 and Mandatory Reliability Standards

6. Section 215 of the FPA requires the Commission to certify an ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[7] Once approved, the Reliability Standards are enforceable in the United States by the ERO, subject to Commission oversight, or by the Commission independently. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[8] and subsequently certified NERC.[9]

B. Network Security Monitoring and Internal Network Security Monitoring

1. Network Security Monitoring in Currently Effective CIP Reliability Standards

7. Currently, network security monitoring in the CIP Reliability Standards focuses on network perimeter defense and preventing unauthorized access at the network perimeter. While responsible entities are required to have a security program to implement various controls,[10] Reliability Standard CIP–005–6 (Electronic Security Perimeter(s)), Requirement R1.5 is the only requirement that addresses monitoring of network traffic for malicious communications at the ESP. In particular, this provision requires a responsible entity to have one or more methods for detecting known or suspected malicious communications for both inbound and outbound communications. Under Requirement R1.5, the only locations that require network security monitoring are the ESP electronic access points for high and medium impact BES Cyber Systems at control centers. The currently effective CIP Reliability Standards do not require entities to have a defined ESP for low impact BES Cyber Systems and, therefore, there is no requirement for network security monitoring for inbound or outbound communication of such systems.

8. The CIP Reliability Standards also require entities to install security monitoring tools at the device level. For instance, Reliability Standard CIP–007–6 (System Security Management), Requirement R.4.1.3 addresses security monitoring and requires the entity to detect malicious code for all high and medium impact BES Cyber Systems and their associated Electronic Access Control or Monitoring Systems, Physical Access Control Systems, and Protected Cyber Assets. To comply with Reliability Standard CIP–007–6 (Systems Security Management), Requirement R.4.1.3, a responsible entity is not required to use INSM methods, such as an intrusion detection system.[11]

2. Internal Network Security Monitoring

9. INSM refers to network security monitoring inside of a trust-zone. INSM is designed to address situations where perimeter network defenses are breached by providing the earliest possible alerting and detection of intrusions and malicious activity within a trust zone. INSM consists of three stages: (1) Collection; (2) detection; and (3) analysis that, taken together, provide the benefit of early detection and alerting of intrusions and malicious activity.[12] Some of the tools used for INSM include: Anti-malware; Intrusion Detection Systems; Intrusion Prevention Systems; and firewalls.[13] These tools are multipurpose and can be used for collection, detection, and analysis (*e.g.,* forensics). Additionally, some of the tools (*e.g.,* anti-malware, firewall, or Intrusion Prevention Systems) have the capability to block network traffic.

10. The benefits of INSM can be understood by first describing the way attackers commonly compromise targets. Attackers typically follow a systematic process of planning and execution to increase the likelihood of a successful compromise.[14] This process includes: Reconnaissance (*e.g.,* information gathering); choice of attack type and method of delivery (*e.g.,* malware delivered through a phishing campaign); taking control of the entity's systems; and carrying out the attack

[7] 16 U.S.C. 824o.

[8] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, 71 FR 8662 (Feb. 17, 2006), 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 71 FR 19814 (Apr. 18, 2006), 114 FERC ¶ 61,328 (2006).

[9] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[10] *See, e.g.,* (1) network perimeter defenses (CIP–005–7, Requirement R1—Electronic Security Perimeter); (2) sensitive information control (CIP–011–2—Information Protection, CIP–004–6, Requirement R4—Access Management Program, and CIP–004–6, Requirement R5—Access Revocation); (3) anti-malware (CIP–007–6, Requirement R3—Malicious Code Prevention); (4) security awareness and training (CIP–004–6, Requirement R1—Security Awareness Program and CIP–004–6, Requirement R2—Cyber Security Training Program); and (5) configuration change management (CIP–010–4, Requirement R1—Configuration Change Management).

[11] Under Reliability Standard CIP–007–6, Requirement R.4.1.3, an entity may choose, but is not required, to use system generated listing of network log in/log outs, or malicious code, or other types of monitored network traffic at the perimeter of all high and medium impact BES Cyber Systems. *See* Reliability Standard CIP–007–6 (Cyber Security—Systems Security Management), Requirement R.4.1.3, Measures (stating that examples of evidence of compliance may include, but are not limited to, a paper or system generated listing of monitored activities for which the BES Cyber System is configured to log and capable of detecting).

[12] *See* Chris Sanders & Jason Smith, *Applied Network Security Monitoring,* at 9–10 (Nov. 2013).

[13] *See* NIST Special Publication 800–83, *Guide to Malware Incident Prevention and Handling for Desktops and Laptops,* at pp. 10–13 (July 2013) (Explaining that anti-malware tools find and remove malware. Intrusion Detection Systems monitor a network for anomalous activity, which includes malicious activity or policy violations, and report them to security teams for further analysis. A firewall monitors and controls incoming and outgoing network traffic).

[14] A widely accepted cybersecurity attack framework for describing the process that an effective adversary typically follows to increase the probability of a successful compromise is referred to as Cyber Kill Chain. The Cyber Kill Chain provides more detail on the specific steps that an attacker could follow. SANS Institute, *Applying Security Awareness to the Cyber Kill Chain,* (May 2019), *https://www.sans.org/blog/applying-security-awareness-to-the-cyber-kill-chain/.*

(*e.g.,* exfiltration of project files, administrator credentials, and employee personal identifiable information).[15] Successful cyberattacks require the attacker to gain access to a target system and execute commands while in that system.

11. INSM could better position an entity to detect malicious activity that has circumvented perimeter controls. Because an attacker that moves among devices internal to a trust zone must use network pathways and required protocols to send malicious communications, INSM will potentially alert an entity of the attack and improve the entity's ability to stop the attack at its early phases.

12. By providing visibility of network traffic that may only traverse internally within a trust zone, INSM can warn entities of an attack in progress. For example, properly placed, configured, and tuned INSM capabilities such as intrusion detection system and intrusion prevention system sensors could detect and/or block malicious activity early and alert an entity of the compromise. INSM can also be used to record network traffic for analysis, providing a baseline that an entity can use to better detect malicious activity. Establishing baseline network traffic allows entities to define what is and is not normal and expected network activity and determine whether observed anomalous activity warrants further investigation.[16] The collected network traffic can also be retained to facilitate timely recovery and/or perform a thorough post-incident analysis of malicious activity.

13. In summary, INSM better postures an entity to detect an attacker in the early phases of an attack and reduces the likelihood that an attacker can gain a strong foothold and potential command and control, including operational control, on the target system. In addition to early detection and mitigation, INSM may improve incident response by providing higher quality data about the extent of an attack internal to a trust zone. High quality data from collected network traffic is important for recovering from cyberattacks as this type of data allows for: (1) Determining the timeframe for backup restoration; (2) creating a record of the attack for incident response and reporting; and (3) analyzing the attack itself to prevent it from happening again (*e.g.,* through lessons learned that can improve organizational policies, processes, and playbooks).[17] Finally, INSM allows entities to conduct internal assessments and prioritize any improvements based on their risk profile.[18]

II. Discussion

14. As discussed below, we believe that the absence of a requirement to conduct INSM for CIP networked environments containing high and medium impact BES Cyber Systems constitutes a gap in the Reliability Standards. Accordingly, pursuant to section 215(d)(5) of the FPA, we propose to direct NERC to develop new or modified Reliability Standards that address the use of INSM for high and medium impact BES Cyber Systems. We believe that requiring entities to implement INSM will improve visibility and awareness of communications between networked devices and between devices internal to trust zones (*i.e.,* ESPs), and increase the probability of detecting and mitigating malicious activity in the early phases of an attack.

15. We also seek comments on the usefulness and practicality of implementing INSM to detect malicious activity in networks with low impact BES Cyber System, including any potential benefits, technical barriers, and associated costs. The Commission may broaden its directive in a final rule to include low impact BES Cyber Systems, or some subset of low impact BES Cyber Systems, if the filed comments support such a directive. While the high and medium impact categories have defined thresholds, the low impact category of BES Cyber Systems is essentially a broad group of all BES Cyber Systems that do not satisfy the high or medium impact thresholds. Identifying a subset of low impact BES Cyber Systems to which INSM provisions would apply could allow entities to focus their resources on the assets with a more significant risk profile within the broad low impact tier of BES Cyber Systems. For example, a subset of low impact BES Cyber Systems to which INSM provisions could apply may be contained within control centers and backup control centers, transmission stations and substations, and/or generation resources.[19]

16. In the following sections, we discuss: (A) Current risks to trusted CIP networked environments; (B) how INSM is a widely recognized control against cyberattacks; (C) how the absence of INSM constitutes a gap in the CIP Reliability Standards; and (D) how the proposed directive would address the gap.

A. Risks to Trusted CIP Networked Environment

17. Currently, the NERC CIP Reliability Standards require monitoring of the ESP and associated systems for high and medium impact BES Cyber Systems. However, even when the ESP is monitored and protected, the CIP networked environment (*i.e.,* trust zone) remains vulnerable to cyber threats like insider threats or supply chain attacks initiated by an adversary by infiltrating a trusted vendor, among other attack vectors. In the context of supply chain risk, a malicious update from a known software vendor could be downloaded directly to a server as trusted code, and it would not set-off any alarms until abnormal behavior occurred and was detected. Because the CIP networked environment is a trust zone, the compromised server in the trust zone could be used to install malicious updates directly onto devices that are internal to the CIP networked environment without detection. In the context of an insider threat, an employee with elevated administrative credentials could identify and collect data, add additional accounts, delete logs, or even exfiltrate data without being detected.

18. For example, the recent SolarWinds attack demonstrates how an attacker can bypass all network perimeter-based security controls traditionally used to identify the early phases of an attack.[20] On December 13, 2020, FireEye Inc., a cybersecurity solutions and forensics firm, identified a global intrusion campaign that introduced a compromise delivered through updates to the Orion network monitoring product from SolarWinds, a widely used IT infrastructure management software.[21] This supply

[15] *Id.*

[16] *See* CISA, *Best Practices for Securing Election Systems,* Security Tip (ST19–002), (Aug. 2021), *https://www.cisa.gov/tips/st19-002.*

[17] Help Net Security, *Three Reasons Why Ransomware Recovery Requires Packet Data,* (Aug. 2021), *https://www.helpnetsecurity.com/2021/08/24/ransomware-recovery-packet-data/.*

[18] CISA, *CISA Analysis: FY2020 Risk and Vulnerability Assessments,* (July 2021), *https://www.cisa.gov/sites/default/files/publications/FY20-RVA-Analysis_508C.pdf.*

[19] Reliability Standard CIP–002–5.1a (Cyber Security—BES Cyber System Categorization), Attachment 1, Section 3 (explaining that low impact rating is assigned to BES Cyber Systems that, among other requirements, are associated with assets such as control centers and backup control centers, transmission stations and substations, generation resources, etc.).

[20] *See* FERC, NERC, *SolarWinds and Related Supply Chain Compromise,* at 16 (July 7, 2021), *https://cms.ferc.gov/media/solarwinds-and-related-supply-chain-compromise-0.*

[21] FireEye, *Global Intrusion Campaign Leverages Software Supply Chain Compromise,* (2020), *https://www.fireeye.com/blog/products-and-services/2020/12/global-intrusion-campaign-leverages-software-supply-chain-compromise.html.*

chain attack leveraged a trusted vendor to compromise the networks of public and private organizations, and it was attributed by the U.S. government to the Russian foreign intelligence service.[22] SolarWinds customers had no reason to suspect the installation of compromised updates because the attacker used an authenticated SolarWinds certificate. This attack bypassed all network perimeter-based security controls traditionally used to identify the early phases of an attack.

19. The supply chain is not the only attack vector used to gain malicious access to a system. While not jurisdictional for purposes of our reliability standards, the May 2021 large-scale ransomware attack targeting Colonial Pipeline provides an important example of an attack via one such vector that could halt an entity's operations.[23] In this case, the attacker gained the credentials to and exploited a legacy virtual private network profile that was not intended to be in use.[24] Although this attack was directed at the information technology (IT) systems of the pipeline, Colonial Pipeline decided to shut down operations as a precaution.[25] With tools such as INSM, a shutdown of operations may not be necessary as entities are better postured to timely detect and mitigate similar events in which an adversary successfully penetrates perimeter defenses and moves freely within the internal network.

20. In addition to early detection, INSM is critical for identifying malicious activities at the later stages of cybersecurity attacks. Absent INSM, an entity may not be alerted if an adversary establishes a command and control communication channel that interacts with the compromised system on a regular basis.[26] Once an attacker proceeds to the last phase of an attack, the attacker will have had time to compromise multiple devices, steal user credentials, and map the network extensively.[27] Removing an attacker at this level of penetration can be time consuming (*e.g.,* months to years), costly, and extremely difficult.

21. The serious operational consequences of such undetected penetration into a networked environment for the BES could include: (1) Loss of situational awareness monitoring; (2) loss of coordination capabilities during reliability events and system restoration activities; (3) unexpectedly large power flows; (4) loss of voice or data communication; (5) loss of protection systems; (6) loss of electric generation, transmission, or fuel supply, water supply/coolant; (7) power market disruption; and (8) loss of Critical Energy/Electric Infrastructure Information.[28] For example, if an attacker compromises high and/or medium impact BES Cyber Systems internal to a CIP networked environment (*i.e.,* trust zone) without INSM, the attacker could communicate with and move freely between devices within a trust zone with little likelihood of detection. The attacker could then access the Supervisory Control and Data Acquisition (SCADA)[29] system and control equipment like circuit breakers[30] dropping generating resources or load, and potentially causing BES instability or uncontrolled separation.[31]

B. INSM Is a Widely Recognized Control Against Cyberattacks

22. Elements of INSM have been recognized and recommended by government officials and industry experts as necessary for the early detection and mitigation of cyberattacks. For example, on May 12, 2021, the President issued Executive Order No. 14028 on Improving the Nation's Cybersecurity,[32] which directly addresses cyber protection through increased visibility and data collection.[33] The Executive Order directs the Federal government and encourages the private sector to implement several aspects of INSM and emphasizes that the Federal government must improve its efforts to identify, deter, protect against, detect, and respond to the actions of sophisticated malicious actor cyber campaigns that threaten the security and privacy of the public sector, private sector, and the American people.[34] Further, the Executive Order instructs Federal agencies, among other things, to modernize their approach to cybersecurity by increasing visibility into threats and advancing toward zero

[22] The White House, *Fact Sheet: Imposing Costs for Harmful Foreign Activities by the Russian Government,* (April 15, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/15/fact-sheet-imposing-costs-for-harmful-foreign-activities-by-the-russian-government/.*

[23] Colonial Pipeline, *Media Statement Update: Colonial Pipeline System Disruption* (May 9, 2021), *https://www.colpipe.com/news/press-releases/media-statement-colonial-pipeline-system-disruption* (stating that after learning of the attack, Colonial took certain systems offline to contain the threat. These actions temporarily halted all pipeline operations and affected some of Colonial's IT systems) (May 9, 2021 Colonial Pipeline Media Statement Update); Colonial Pipeline, *Media Statement Update: Colonial Pipeline System Disruption,* (May 8, 2021), *https://www.colpipe.com/news/press-releases/media-statement-colonial-pipeline-system-disruption* (On May 7, 2021 Colonial Pipeline Company learned it was the victim of a cybersecurity attack and determined that the incident involved ransomware).

[24] Hearing Before The United States House Of Representatives Committee On Homeland Security (117th Congress), Testimony of Joseph Blount, President and Chief Executive Officer Colonial Pipeline Company, at 4 (June 9, 2021), *https://www.congress.gov/117/meeting/house/112689/witnesses/HHRG-117-HM00-Wstate-BlountJ-20210609.pdf. See also* Reuters, *One Password Allowed Hackers to Disrupt Colonial Pipeline,* CEO Tells Senators (June 8, 2021), *https://www.reuters.com/business/colonial-pipeline-ceo-tells-senate-cyber-defenses-were-compromised-ahead-hack-2021-06-08/* (explaining that the legacy virtual private network had single-factor authentication, a password, and did not have a multi-factor authentication requirement in place).

[25] May 9, 2021 Colonial Pipeline Media Statement Update.

[26] A command and control communication channel is used to issue instructions to the compromised devices, download additional malicious payloads (*e.g.,* malware), which sit harmlessly until triggered, and exfiltrate data. *See* NSA, *Cybersecurity Report: NSA/CSS Technical Cyber Threat Framework* (Nov. 2018), *https://www.nsa.gov/portals/75/documents/what-we-do/cybersecurity/professional-resources/ctr-nsa-css-technical-cyber-threat-framework.pdf.*

[27] Network mapping is used to compile an electronic inventory of the systems and the services on the network. *See* SANS Institute, *Glossary of Terms, https://www.sans.org/security-resources/glossary-of-terms.*

[28] SERC Reliability Corporation, *2020 SERC Reliability Risk Report,* (Sept. 21, 2020), *https://www.serc1.org/docs/default-source/committee/ec-reliability-risk-working-group/2020-reliability-risk-report.pdf?sfvrsn=e80ea39_2.*

[29] SCADA is a system that aims to monitor and control field devices at remote sites. SCADA systems are critical as they help maintain efficiency by collecting and processing real-time data. *See* DPS Telecom, *How Do SCADA Systems Work?, https://www.dpstele.com/scada/how-systems-work.php.*

[30] A circuit breaker is an electrical switch designed to protect an electrical circuit from damage caused by overcurrent/overload or short circuit. Its basic function is to interrupt current flow after protective relays detect a fault. *See* Eaton, *Circuit Breaker Fundamentals, https://www.eaton.com/us/en-us/products/electrical-circuit-protection/circuit-breakers/circuit-breakers-fundamentals.html.*

[31] Electricity Information Sharing and Analysis Center (E–ISAC), *Modular ICS Malware* (Aug. 2017), *https://www.eisac.com/cartella/Asset/00006542/TLP_WHITE_E-ISAC_SANS_Ukraine_DUC_6_Modular_ICS_Malware%20Final.pdf?parent=64412.*

[32] Executive Order No. 14028, 86 FR 26633 (May 12, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10460.pdf.*

[33] The scope of protection includes systems that process data (*i.e.,* information technology) and those that run the vital machinery that ensures safety (*i.e.,* operational technology).

[34] Executive Order No. 14028, 86 FR 26633, 26635, 26643 (May 12, 2021) (mandating that the ''Federal Government shall employ all appropriate resources and authorities to maximize the early detection of cybersecurity vulnerabilities and incidents on its networks'' and ''increas[e] the Federal Government's visibility into threats.'' The Executive Order further emphasizes that ''cybersecurity requires more than government action'' and ''[t]he private sector must adapt to the continuously changing threat environment, ensure its products are built and operate securely, and partner with the Federal Government to foster a more secure cyberspace.'').

trust principles;[35] allocating resources to maximize early detection of cybersecurity vulnerabilities and incidents on networks;[36] and collecting and maintaining information from network and system logs, as they are invaluable tools for investigation and remediation.[37]

23. In addition, on July 28, 2021, the President signed the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (National Security Memorandum) to comprehensively address cybersecurity for critical infrastructure.[38] The President emphasizes that ''[r]ecent high-profile attacks on critical infrastructure around the world, including the ransomware attacks on the Colonial Pipeline and JBS Foods in the United States, demonstrate that significant cyber vulnerabilities exist across U.S. critical infrastructure, which is largely owned and operated by the private sector.'' [39] The National Security Memorandum established an Industrial Control Systems Cybersecurity Initiative (Cybersecurity Initiative) to facilitate the deployment of technology and systems that provide threat visibility, indicators, detections, and warnings.[40] The Cybersecurity Initiative started with a pilot in the electricity sector and has wide participation, including participation by vendors that have implemented INSM in their products.[41]

24. Furthermore, CISA and NIST have recommended detailed cybersecurity practices, which include elements of INSM, such as recommending that organizations conduct network baseline analysis on control systems and networks to understand approved communication flows and to monitor control systems for malicious activity on control systems.[42] Similarly, CISA and the Federal Bureau of Investigation published a joint cybersecurity advisory in response to illicit activities by a Chinese group known as APT40.[43] The activities of APT40 resulted in the theft of trade secrets, intellectual property, and other high-value information from companies and organizations in the United States and abroad.[44] The joint cybersecurity advisory recommended deployment of INSM measures such as active scanning and monitoring of internet-accessible applications for unauthorized access, modification, and anomalous activities; logging domain name service queries; developing and monitoring network and system baselines to allow for the identification of anomalous activity; and using baseline comparison to monitor Windows event logs and network traffic to detect when a user maps a privileged administrative share on a Windows system.[45]

25. Industry and government cybersecurity experts also supported the use of INSM at the Commission's 2021 Annual Reliability Technical Conference.[46] Panelists discussed the importance of improved visibility to detect cyberattacks by implementing network capabilities like INSM.[47] One panelist observed that recent attacks like SolarWinds and Colonial Pipeline ''demonstrated how a coordinated attack could compromise our systems,'' and that they ''really underscore[] the need for heightened visibility . . . more comprehensive logging of events, potentially other controls that you know go across all asset environments, but it should be done in a risk based way.'' [48] Another panelist discussed additional benefits of INSM, stating that monitoring and having the appropriate logs are essential to perform a root cause analysis and understand the sequence of events that occurred, and collection of data (*i.e.,* logs), enabled by INSM, is also essential to gaining a deeper understanding of a cyberattack.[49]

C. The Absence of INSM Constitutes a Gap in the Reliability Standards

26. While NERC's approved CIP Reliability Standards provide a broad set of cybersecurity protections, they do not require INSM. Currently, the only locations that require network security monitoring are the electronic access points at high and medium impact BES Cyber Systems at control centers. In these zones, trusted vendors or authorized individuals are the only users with access, but they are not subject to monitoring under the CIP Reliability Standards. Implementing INSM will help to detect and mitigate situations where malicious actors exploit this gap.

27. Given the increased sophistication of cyberattacks, relying on network perimeter defense and other existing controls leaves trust zones vulnerable. As the President's Deputy National Security Advisor for Cyber and Emerging Technology explained ''[i]f you can't see a network, you can't defend a network.'' [50] Panelists at the Commission's 2021 Annual Reliability Technical Conference confirmed this gap in the CIP Reliability Standards, explaining that there is

[35] *Id.* at 26635. Executive Order No. 14028 refers to zero trust architecture. Zero trust is the term for an evolving set of cybersecurity paradigms that move defenses from static, network-based perimeters to focus on users, assets, and resources. A zero trust architecture uses zero trust principles to plan industrial and enterprise infrastructure and workflows. Zero trust assumes there is no implicit trust granted to assets or user accounts based solely on their physical or network location (*i.e.,* local area networks versus the internet) or based on asset ownership (enterprise or personally owned). *See generally* National Institute of Standards and Technology (NIST), *NIST Special Publication 800–207 Zero Trust Architecture,* (Aug. 2020), *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-207.pdf (providing a general definition of zero trust and general information and cases where zero trust may improve an entity's overall cybersecurity posture).*

[36] Executive Order No. 14028, 86 FR 26633, 26643 (May 12, 2021).

[37] *Id.* at 26644.

[38] National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems, Section 2 (Industrial Control Systems Cybersecurity Initiative), (July 28, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/national-security-memorandum-on-improving-cybersecurity-for-critical-infrastructure-control-systems/* (National Security Memorandum). *See also* The White House, *Fact Sheet: Biden Administration Announces Further Actions to Protect U.S. Critical Infrastructure,* (July 28, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-biden-administration-announces-further-actions-to-protect-u-s-critical-infrastructure/*) (The White House July 28, 2021 Fact Sheet).

[39] The White House July 28, 2021 Fact Sheet. JBS is a meat processing company, which shut down all of its beef processing plants in the USA as a result of a ransomware attack. *See* U.S. Department of Agriculture, *Statement from the U.S. Department of Agriculture on JBS USA Ransomware Attack,* (June 2021), *https://www.usda.gov/media/press-releases/2021/06/01/statement-us-department-agriculture-jbs-usa-ransomware-attack.*

[40] National Security Memorandum, Section 2 (Industrial Control Systems Cybersecurity Initiative).

[41] White House July 28, 2021 Fact Sheet.

[42] CISA, *Critical Infrastructure Control Systems Cybersecurity Performance Goals and Objectives* (Sept. 21, 2021), *https://www.cisa.gov/control-systems-goals-and-objectives.*

[43] Joint Cybersecurity Advisory, *Tactics, Techniques, and Procedures of Indicted APT40 Actors Associated with China's MSS Hainan State Security Department,* (July 19, 2021), *https://www.cisa.gov/uscert/sites/default/files/publications/CSA_TTPs-of-Indicted-APT40-Actors-Associated-with-China-MSS-Hainan-State-Security-Department.pdf.*

[44] *Id.* at 1.

[45] *Id.* at 4–5.

[46] Federal Energy Regulatory Commission, *2021 Annual Reliability Technical Conference,* Transcript, Panel 3: Managing Cyber Risks in the Electric Power Sector, Docket No. AD21–11–000 (Sept. 30, 2021), *https://www.ferc.gov/news-events/events/annual-commissioner-led-reliability-technical-conference-09302021.*

[47] *Id.* at 165 (Ben Miller, Vice President, Services and R&D, Dragos Inc.); 178:14:23 (Mark Fabro, President and Chief Security Scientist, Lofty Perch).

[48] *Id.* at 200 (Manny Cancel, Senior Vice President and Chief Executive Officer, NERC E–ISAC).

[49] *Id.* at 202:8–19 (Miller).

[50] The White House, *Press Briefing by Press Secretary Jen Psaki and Deputy National Security Advisor for Cyber and Emerging Technology Anne Neuberger,* (Feb. 17, 2021), *https://www.whitehouse.gov/briefing-room/press-briefings/2021/02/17/press-briefing-by-press-secretary-jen-psaki-and-deputy-national-security-advisor-for-cyber-and-emerging-technology-anne-neuberger-february-17-2021/.*

''implementation of perimeter controls and some other protective controls, and some planning, but there is not a concept around detection and monitoring.'' [51] An estimate from a security vendor panelist indicates that 70% of the NERC CIP Reliability Standards are focused on prevention, and the remaining 30% focus on other protection measures, including monitoring.[52] Panelists supported the view that monitoring within a trust zone is critical, underscoring the need to close the reliability gap in the currently effective Reliability Standards.[53] This is particularly important as the energy sector undergoes a digital transformation, which creates new cyber threat pathways.[54]

28. NERC facilitated the voluntary use of INSM in its CMEP Practice Guide, which provides guidance on how to incorporate network sensors in the ESP while being compliant with the CIP Reliability Standards. These network sensors enable entities to use INSM, if they choose, and support implementation of the Essence Cybersecurity Tool.[55] However, the CMEP Practice Guide does not modify the CIP Reliability Standards to require INSM, leaving unaddressed the cybersecurity gap within trust zones.

D. The Commission Proposed Directive Addresses the Identified Reliability Gap

29. Pursuant to section 215(d)(5) of the FPA, we propose to direct NERC to develop new or modified CIP Reliability Standards that require security controls for INSM for high and medium impact BES Cyber Systems. Based on the current threat environment discussed above, a requirement for INSM that augments existing perimeter defenses is critical to increasing network visibility so that an entity may understand what is occurring in its CIP networked environment, and thus improve capability to timely detect potential compromises. INSM also allows for the collection of data and analysis required to implement a defense strategy, improves an entity's incident investigation capabilities, and increases the likelihood that an entity can better protect itself from a future cyberattack and address any security gaps the attacker was able to exploit.

30. The proposal to direct NERC to add an INSM requirement to the existing set of CIP Reliability Standard is also consistent with Executive Order No. 14028, which calls for employing a zero trust cybersecurity approach, and the objectives of the President's July 2021 Cybersecurity Initiative targeting deployment of control system cybersecurity technologies in the electricity and other critical sectors. INSM is a fundamental element of the zero trust approach and should improve the cybersecurity posture of responsible entities with high and medium impact BES Cyber Systems.

1. High and Medium Impact BES Cyber Systems

31. To address the reliability gap and improve cybersecurity, we propose to direct that NERC, as the ERO, develop new or modified CIP Reliability Standards requiring that applicable responsible entities implement INSM for their high and medium impact BES Cyber Systems. Such new or modified Reliability Standards should address the following three security objectives that pertain to INSM. First, any new or modified CIP Reliability Standards should address the need for each responsible entity to develop a baseline for their network traffic by analyzing expected network traffic and data flows for security purposes. This objective reduces the likelihood that an attacker could exploit legitimate cyber resources to: (1) Escalate privileges, *i.e.,* exploit software vulnerability to gain administrator account privileges; (2) move undetected inside a CIP networked environment (*i.e.,* trust zone); and (3) execute unauthorized code, *e.g.,* a virus or ransomware. Second, any new or modified CIP Reliability Standards should address the need for responsible entities to monitor for and detect unauthorized activity, connections, devices, and software inside the CIP networked environment (*i.e.,* trust zone). This objective reduces detection time, which shortens the time an attacker has to leverage compromised user accounts and traverse over unmonitored network connections. And third, any new or modified CIP Reliability Standards should address the ability to support operations and response by requiring responsible entities to: (1) Log and packet capture [56] network traffic; (2) maintain sufficient records to support incident investigation (*i.e.,* monitoring, collecting, and analyzing current and historical evidence); and (3) implement measures to minimize the likelihood of an attacker removing evidence of their Tactics, Techniques, and Procedures (TTPs) [57] from compromised devices. Logging, including packet capture, of network traffic is critical for a responsible entity to assess the severity of the attack, assess the scope of systems compromised, and devise appropriate mitigations.

32. We seek comments on all aspects of the proposed directive, including the three objectives discussed above. In particular, we seek comments on: (1) What are the potential challenges to implementing INSM (*e.g.,* cost, availability of specialized resources, and documenting compliance); (2) what capabilities (*e.g.,* software, hardware, staff, and services) are appropriate for INSM to meet the security objectives described above; (3) are the security objectives for INSM described above necessary and sufficient and, if not sufficient, what are other pertinent objectives that would support the goal of a having responsible entities successfully implement INSM; and (4) what is a reasonable timeframe for expeditiously developing and implementing Reliability Standards for INSM given the importance of addressing this reliability gap?

2. Low Impact BES Cyber Systems

33. While our proposal is centered on high and medium impact BES Cyber Systems, we also seek comments on the usefulness and practicality of implementing INSM to detect malicious activity in networks with low impact BES Cyber Systems, including any

[51] 2021 Annual Reliability Technical Conference, Tr. 201:20–25; 202:1–7 (Miller).

[52] *Id.*

[53] *Id.* at 202:22–23 (Tony Hall, Manager, CIP Program, Louisville Gas and Electric Company and Kentucky Utilities Company).

[54] *Id.* at 170:24–25; 171:1 (Puesh Kumar, Acting Principal Deputy Assistant Secretary, Office of Cybersecurity, Energy Security, and Emergency Response, U.S. Department of Energy).

[55] National Rural Electric Cooperative Association (NRECA), *DOE Awards NRECA $6M to Take Essence Cybersecurity Tool to the Next Level* (Sept. 29, 2020), *https://www.electric.coop/doe-gives-nreca-6m-to-take-essence-cybersecurity-tool-to-the-next-level;* NRECA, *New Cyber Technology Provides Real-Time Defense* (March 15, 2021), *https://www.electric.coop/new-essence-cyber-technology-provides-real-time-defense.*

[56] Packet capture allows information to be intercepted in real-time and stored for long term or short-term analysis, this providing a network defender greater insight into a network. Packet captures provide context to security events, such as intrusion detection system alerts. *See* CISA, *National Cybersecurity Protection System Cloud Interface Reference Architecture, Volume 1, General Guidance,* at 13,25, (July 2020), *https://www.cisa.gov/sites/default/files/publications/CISA_NCPS_Cloud_Interface_RA_Volume-1.pdf.*

[57] TTPs describe the behavior of an actor. Tactics are high-level descriptions of behavior, techniques are detailed descriptions of behavior in the context of a tactic, and procedures are even lower-level, highly detailed descriptions in the context of a technique. TTPs could describe an actor's tendency to use a specific malware variant, order of operations, attack tool, delivery mechanism (*e.g.,* phishing or watering hole attack), or exploit. *See,* NIST, *NIST Special Publication 800–150: Guide to Cyber Threat Information Sharing,* (Oct. 2016), *https://nvlpubs.nist.gov/nistpubs/Special Publications/NIST.SP.800-150.pdf.*

potential benefits, technical barriers and associated costs. In particular, we seek comments on whether the same risks associated with high and medium impact BES Cyber Systems apply to low impact BES Cyber Systems. Those risks could include: (1) Escalating privileges; (2) moving inside the CIP networked environment (*i.e.,* trust zone); and (3) executing unauthorized code. To the extent such risks exist, we seek comment on the appropriate scope of coverage for INSM needed to meet the security objectives listed above for low impact BES Cyber Systems.

34. As discussed above, there may be benefits to having INSM requirements apply to a defined subset of low impact BES Cyber Systems. To better understand the potential benefits of such an approach, we first seek comment on possible criteria or methodology for identifying an appropriate subset of low impact BES Cyber Systems that could benefit from INSM. For example, should the subset focus on low impact BES Cyber Systems located at assets strategic for the reliable operation of the BES, such as control centers and backup control centers, transmission stations and substations, and/or generation resources. Second, we seek comment on the potential benefits or drawbacks of defining a subset of low impact BES Cyber Systems. For example, would focusing resources on the assets with a more significant risk profile within the broad low impact tier of BES Cyber Systems improve an entity's risk profile and avoid situations where an attacker exploits legitimate cyber resources without timely detection and response. Third, as discussed above, there are currently no CIP requirements for low impact BES Cyber Systems for monitoring communications at the ESP.[58] Would it make sense to require INSM when perimeter monitoring is not required? Would it be appropriate to address both perimeter monitoring and INSM for low impact BES Cyber Systems?

III. Information Collection Statement

35. The information collection requirements contained in this Notice of Proposed Rulemaking are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[59] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[60] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number. Comments are solicited on the Commission's need for the information proposed to be reported, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

36. The proposal to direct NERC to develop new, or to modify existing, reliability standards (and the corresponding burden) are covered by, and already included in, the existing OMB-approved information collection FERC–725 (Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards; OMB Control No. 1902–0225),[61] under Reliability Standards Development.[62] The reporting requirements in FERC–725 include the ERO's overall responsibility for developing Reliability Standards, such as any Reliability Standards that relate to internal network security monitoring for high and medium impact BES Cyber Systems.

IV. Environmental Analysis

37. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[63] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[64] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

38. The Regulatory Flexibility Act of 1980 (RFA)[65] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.

39. We are proposing only to direct NERC, the Commission-certified ERO, to develop modified Reliability Standards that require internal network security monitoring within a trusted Critical Infrastructure Protection networked environment for high and medium impact BES Cyber Systems.[66] Therefore, this Notice of Proposed Rulemaking will not have a significant or substantial impact on entities other than NERC. Consequently, the Commission certifies that this Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities. Any Reliability Standards proposed by NERC in compliance with this rulemaking will be considered by the Commission in future proceedings. As part of any future proceedings, the Commission will make determinations pertaining to the Regulatory Flexibility Act based on the content of the Reliability Standards proposed by NERC.

V. Comment Procedures

40. The Commission invites interested persons to submit comments on the matters and issues proposed in this Notice of Proposed Rulemaking to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 28, 2022. Comments must refer to Docket No. RM22–3–000, and must include the commenter's name, the organization they represent, if applicable, and address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

41. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The

[58] *See supra* Para. 7.

[59] 44 U.S.C. 3507(d).

[60] 5 CFR 1320.11 (2021).

[61] Another item for FERC–725 is pending review at this time, and only one item per OMB Control No. can be pending OMB review at a time. In order to submit this NOPR timely to OMB, we are using FERC–725(1B) (a temporary, placeholder information collection number).

[62] Reliability Standards Development as described in FERC–725 covers standards development initiated by NERC, the Regional Entities, and industry, as well as standards the Commission may direct NERC to develop or modify.

[63] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[64] 18 CFR 380.4(a)(2)(ii) (2021).

[65] 5 U.S.C. 601–612.

[66] *Cf. Cyber Security Incident Reporting Reliability Standards,* Notice of Proposed Rulemaking, 82 FR 61499 (Dec. 28, 2017), 161 FERC ¶ 61,291 (2017) (proposing to direct NERC to develop and submit modifications to the NERC Reliability Standards to improve mandatory reporting of Cyber Security Incidents, including incidents that might facilitate subsequent efforts to harm the reliable operation of the BES).

Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

42. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier- or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VI. Document Availability

43. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

44. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

45. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Issued: January 20, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01537 Filed 1–26–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2021–0953; FRL–9396–01–R7]

Air Plan Approval; Missouri; Control of Emissions From the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revisions to the Missouri State Implementation Plan (SIP) received on June 10, 2021. In the submission, Missouri requests to revise a regulation that controls emissions from facilities in St. Louis City and Jefferson, St. Charles, Franklin, and St. Louis Counties. The revisions to this rule include adding incorporations by reference to other State rules, including definitions specific to the rule, removing unnecessary words, making other administrative wording changes, and adding alternative test methods. These revisions do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between state and federally approved rules.

DATES: Comments must be received on or before February 28, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2021–0953 to *https://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7986; email address: *donohue.allie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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II. What is being addressed in this document?
III. Have the requirements for approval of a SIP revision been met?
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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2021–0953, at *https://www.regulations.gov*. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The 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. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). 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 *https://www.epa.gov/dockets/commenting-epa-dockets*.

II. What is being addressed in this document?

The EPA is proposing to approve revisions to 10 Code of State Regulation (CSR) 10–5.390, Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products in the Missouri SIP. The revisions move previously SIP-approved definitions from 10 CSR 10–6.020, 40 CFR 63.11607, and 40 CFR 63.5781 to this chapter to streamline the rule. The revisions also reorganize reporting and recordkeeping requirements to improve readability, add specific test methods applicable to sources subject to the rule, and make minor edits. The EPA's analysis of the revisions can be found in the technical support document (TSD) included in this docket.

Missouri received four comments from EPA and one comment from the Missouri Department of Natural Resources' Air Pollution Control Program staff during the comment period. Missouri responded to all comments as noted in the State submission included in the docket for

this action. Missouri responded to EPA's comments and as described in the TSD for this action, amended the rule in response to some of EPA's comments. EPA finds that Missouri has adequately addressed the comments.

Therefore, EPA is proposing to approve the revisions to this rule because it will not have a negative impact on air quality.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from January 2, 2020 to April 2, 2020 and received five comments. The State revised the rule based on the comments submitted. In addition, as explained above and in more detail in the TSD which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to approve Missouri's request to revise 10 CSR 10–5.390. Because this rule was previously approved into Missouri's SIP, we are soliciting comments solely on the proposed revisions to the rule and not on the existing text that is approved into Missouri's SIP. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act (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, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves 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);
- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 20, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–5.390'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
10–5.390	Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.	9/30/2020	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2022–01502 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2021–0715, FRL 8879–01–R3]

District of Columbia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is proposing to approve revisions to the District of Columbia's Underground Storage Tank (UST) program submitted by the District of Columbia. This action is based on EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of the District of Columbia's state program and to incorporate by reference those provisions of the District of Columbia's regulations and statutes that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. In the ''Rules and Regulations'' section of this issue of the **Federal Register**, EPA is approving this action by a direct final rule. If no significant negative comment is received, EPA will not take further action on this proposed rulemaking, and the direct final rule will be effective 60 days from the date of publication in this **Federal Register**. If you want to comment on EPA's proposed approval of District of Columbia's revisions to its state UST program, you must do so at this time.

DATES: Send written comments by February 28, 2022.

ADDRESSES: Submit any comments, identified by EPA–R03–UST–2021–0715, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: thompson.khalia@epa.gov.*

Instructions: Direct your comments to Docket ID No.EPA–R03–UST–2021–0715. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The federal website, *https://www.regulations.gov,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

FOR FURTHER INFORMATION CONTACT: Khalia Thompson, (215) 814–3348, *thompson.khalia@epa.gov,* RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

Authority: This proposed rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

Adam Ortiz,

Regional Administrator, EPA Region 3.

[FR Doc. 2022–01433 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–455; FCC 21–124; FRS 64970]

Promoting Fair and Open Competitive Bidding in the E-Rate Program

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes a change to the E-Rate program targeted at several goals: Streamlining program requirements for applicants and service providers, strengthening program integrity,

preventing improper payments, and decreasing the risk of fraud, waste, and abuse. Specifically, the Commission seeks comment on a proposal to implement a central document repository (*i.e.,* bidding portal) through which service providers would be required to submit bids to the E-Rate program administrator, the Universal Service Administrative Company (USAC), instead of directly to applicants.

DATES: Comments are due on or before March 28, 2022, and reply comments are due on or before April 27, 2022.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 21–455, by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *www.fcc.gov/ecfs.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

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

FOR FURTHER INFORMATION CONTACT: For further information, please contact Cara Voth, Office of Managing Director, at *Cara.Voth@fcc.gov* or 202–418–0025, or Joseph Schlingbaum, Telecommunications Access Policy Division, Wireline Competition Bureau, at *Joseph.Schlingbaum@fcc.gov* or 202–418–0829.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 21–455, adopted on December 14, 2021 and released on December 16, 2021. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-looks-promote-fair-open-competitive-bidding-e-rate-program-0.*

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

Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

I. Introduction

1. For over two decades, schools and libraries have relied on the Federal Communications Commission's E-Rate program to secure affordable telecommunications and broadband services to provide connectivity for schools and libraries and connections for students and library patrons. In recent years, the Commission has kept pace with a changing digital landscape and adapted the E-Rate program to meet program participants' growing demand for broadband and more equitable access to funding for Wi-Fi networks and other internal connections. And, to address the daunting challenges that schools and libraries have faced in enabling and facilitating remote learning for students and virtual library services for library patrons during the coronavirus (COVID–19) pandemic, Congress and the Commission have provided flexibility and funding to support remote learning.

2. At the same time as the Commission has provided enhanced access to funding and flexibility in meeting evolving public needs, it has been mindful of the need to protect E-Rate funds, requiring them to be committed for eligible services and equipment provided to eligible entities, for eligible purposes, and in accordance with program rules. Inherent in maintaining good stewardship of program funds is the Commission's commitment to protect against waste, fraud, and abuse and ensure that funds are properly disbursed and used for appropriate purposes. Last year, an audit completed by the Government Accountability Office (GAO) identified opportunities to misrepresent

compliance with competitive bidding requirements as an underlying fraud risk for the E-Rate program. Similarly, the Commission's Office of Inspector General (OIG) has recommended safeguards to protect the E-Rate program, including establishing a central repository for the submission of competitive bidding documents and a holding period, so that bids are not released to applicants until after the closing of a 28-day bidding window.

3. Taking into account these recommendations, the Commission proposes a change to the E-Rate program targeted at several goals: Streamlining program requirements for applicants and service providers, strengthening program integrity, preventing improper payments, and decreasing the risk of fraud, waste, and abuse. Specifically, the Commission seeks comment on a proposal to implement a central document repository (*i.e.,* bidding portal) through which service providers would be required to submit bids to the E-Rate program administrator, USAC, instead of directly to applicants. The Commission seeks comment on requiring USAC to temporarily withhold submitted bids from applicants for a stated minimum period of time. In addition, the Commission seeks comment on whether to revise its rules to require applicants to submit competitive bidding documentation that is not captured in the bidding portal. Finally, the Commission seeks comment on any potential benefits and burdens that the adoption and implementation of a bidding portal and these associated changes would have on E-Rate program participants and the public as well as any required rule modifications needed to effectuate these changes.

II. Discussion

4. The Commission proposes changes to the competitive bidding process for the E-Rate program to enhance program integrity and administrative efficiency. Specifically, the Commission proposes to require prospective service providers to respond to applicant requests for services and equipment by uploading bids into a bidding portal managed by USAC, rather than by submitting bids directly to applicants. The Commission also seeks comment on establishing timeframes on when applicants should be able to review the bids that service providers submit in the portal. Further, the Commission seeks comment on requiring applicants to submit bidding selection documentation, such as bid comparison matrices and related contract documents, at the time applicants request funding for eligible services. The Commission seeks comment on these program changes to guide and assist E-Rate program participants in complying with the Commission's competitive bidding rules, provide transparency and promote fair and open competitive bidding processes, and minimize potential fraud risk for the E-Rate program.

5. The 2020 GAO E-Rate Report highlights that USAC does not have a proactive way to monitor the bidding information submitted by bidders and must rely on requesting such information from applicants or service providers after the culmination of the bidding process. The Report identifies opportunities to misrepresent compliance with the competitive bidding rules and processes as an underlying key fraud risk and notes that such an opportunity exists because of the lack of visibility into the competitive bids that applicants receive. The GAO also references the OIG's previous recommendation that the Commission direct USAC to implement an online competitive-bidding repository. The OIG had asserted that ''[s]ubmission of service provider bids prior to bid selection . . . [would] prevent[] a service provider or applicant from submitting an altered bid or contract to USAC during its Program Integrity Assurance (PIA) review to create the appearance of compliance with [p]rogram rules.'' In response to these concerns, the Commission recognizes that a bidding portal could provide better insights for USAC in an effort to strengthen the integrity of the E-Rate program.

6. The Commission proposes to require service providers to submit bids responsive to FCC Forms 470 through a bid portal managed by USAC, rather than by sending bids directly to the applicant. The Commission anticipates that requiring service providers to submit bids for requested E-Rate services and equipment through a bidding portal will improve USAC's and the Commission's ability to ensure that all entities participating in the E-Rate program conduct a fair and open competitive bidding process. The Commission expects that, in addition to other benefits, a portal that stores E-Rate service providers' bids could prevent certain improper payments and compliance findings related to applicants' failures to produce bid documentation when such documentation is requested by USAC in the pre-commitment and post-commitment stages of application review. Moreover, because the bidding portal will track and store bids and related communications, the portal could save time and increase efficiencies for both applicants and USAC with regard to competitive bidding reviews and audits. The Commission seeks comment on whether a bidding portal would help to promote fair and open competitive bidding and reduce fraud. The Commission also seeks comment on how great the risk is that applicants or service providers may alter or ignore qualified bids to affect the bidding process. Would a bidding portal complement or supplement existing rules and procedures to reduce bid collusion and the risk of fraud in the competitive bidding process? Are there solutions other than a bidding portal or changes to the competitive bidding rules that could likewise reduce bid collusion and the risk of fraud? Commenters are invited to address the feasibility, necessity, and cost effectiveness of implementing a nationwide bidding portal. Are there any other benefits or burdens the Commission should consider, either to stakeholders or the broader public, in deciding whether to implement its competitive bidding proposal?

7. The Commission recognizes that requiring bid responses to be submitted to USAC through a bidding portal would change how service providers submit and share bids with applicants. While these changes may streamline documentation submission and the competitive bidding procedures for applicants and service providers, as well as increase transparency for USAC and the Commission into the bidding process, they also may present obstacles for applicants and service providers. Therefore, the Commission seeks comment on the impact of this proposed requirement on E-Rate program participants, particularly smaller schools and libraries. Should service providers submit their bids directly through the bidding portal or by some other method? Would the requirement to use a central bidding portal discourage participation by applicants and service providers in the E-Rate program? Would applicants be more inclined to hire consultants if a bidding portal is imposed? How would these changes benefit or burden E-Rate program participants? For example, would requiring bids to be uploaded to a central repository managed by USAC help applicants comply with the Commission requirement to retain documentation demonstrating compliance with E-Rate program requirements? Commenters are requested to quantify benefits and burdens, both in terms of time and money. Do these changes promote any

cost and resource efficiencies for E-Rate program participants because they provide ''automated'' assistance with USAC's efforts to seek competitive bidding compliance documentation during Program Integrity Assurance and program audit reviews? Are there any other alternatives the Commission should consider to ensure that applicants and service providers comply with competitive bidding rules?

8. The Commission also seeks comment on whether service providers should be required to submit information in a manner that enables applicants to compare competing bids. Do applicants face difficulty in comparing bids because service providers have submitted their bid responses in a variety of formats? Are there other changes the Commission should consider that could reduce burdens related to competitive bidding for applicants and service providers in using a bidding portal? In some cases, applicants do not receive any bids or receive bids that are not responsive to their requests for service during the specified bidding period. The Commission proposes that the portal allow applicants in these situations to extend their competitive bidding periods as needed and seeks comment on this proposal. Alternatively, could the Commission treat the bidding portal as a repository for bids, that would permit applicants to upload bids received after the fact, but would not require service providers to submit bids through the portal? The Commission seeks comment on the potential benefits and drawbacks of using the bidding portal in this manner.

9. *Bid Holding Period.* E-Rate program rules currently require applicants wait at least 28 days from the posting of their FCC Form 470 before entering into an agreement with a service provider. Actual deadlines for bids to be submitted vary by applicant and are not set by Commission rules or E-Rate program requirements. Applicants are permitted to post FCC Forms 470 as soon as USAC releases the form. Currently, applicants are able to review submitted bids from service providers as they are received which may introduce risk into a fair and open competitive bidding process. In the 2017 OIG Report, the OIG recommended that USAC hold service provider bids in a bid repository for a ''28-day bidding window'' to ensure that service providers were competing on a ''level playing field.''

10. The Commission seeks comment on requiring applicants to wait a specified amount of time before they can access bids submitted in response to their FCC Form 470 service requests. Is 28 days an appropriate length of time to withhold bids? Is a shorter or longer period appropriate in general or for specific circumstances? Should the withholding period be tied to a specific event such as the posting of an applicant's FCC Form 470? If applicants are required to wait before they can access bids submitted in response to their FCC Form 470 service requests, how would the timing variability of their procurements be impacted by such a proposal? Would a minimum bid holding period assist an applicant in complying with § 54.503(c)(4) because it would not be able to view bids for at least four weeks and would presumably be prevented from entering into agreements until that time? If the Commission requires applicants to wait a specified amount of time before accessing bids, should it also preclude service providers from sharing bids directly with applicants during this time period? The Commission seeks comment on these questions.

11. In some cases, for a variety of reasons, applicants file their FCC Forms 470 toward the end of E-Rate application filing window closing date, leaving little time remaining to wait a minimum of 28 days, select service providers, and seek funding. If the Commission is to require applicants to wait a specified length of time before accessing bids, are there safeguards it can implement to help applicants better align their timelines? For example, should the ability to file an FCC Form 470 be closed for a certain period of time before the FCC Form 471 window closes to allow for both a minimum number of days (*e.g.,* a 28-day waiting period) plus additional time (*e.g.,* two weeks) for applicants to review bids and make service provider selections? Are there processes that would be disrupted by withholding bid responses from applicants for a minimum period of time? The Commission seeks comment on this or other proposals that would allow any waiting period it may adopt to align with applicants' need for time for bid analysis and provider selection. To better understand the potential impact on applicants, the Commission also seeks information on the reasons why some applicants post FCC Forms 470 to initiate the competitive bidding process near the end of the FCC Form 471 filing window.

12. The Commission seeks comment on any overall program benefits these proposals may offer to applicants, including the prevention of inadvertent errors that lead them to run afoul of the E-Rate competitive bidding requirements. What other compliance issues with the Commission's competitive bidding requirements might their proposals help applicants and service providers avoid? Should the Commission consider changes to the training and outreach that USAC offers to applicants and service providers to address issues relating to competitive bidding and document retention, as SECA suggests? Are there other aspects of the competitive bidding rules that are confusing, burdensome, or vague that may lead to inadvertent, but not necessarily fraudulent, competitive bidding violations? If so, what are they and what modifications might the Commission make to resolve any confusion and provide clarity around these rules?

13. *System Issues.* The Commission seeks comment on how best to leverage the existing web-based account and application management portal, known as the E-Rate Productivity Center or EPC in implementing a bidding portal. Are there specific administrative burdens or benefits that the Commission should consider if the bidding portal is integrated with EPC? Conversely, what administrative burdens or benefits are associated with using a separate system for this purpose? Is there a risk of applicant confusion and technical difficulty if applicants are asked to use two systems to store documentation for the E-Rate program? Or does it matter to applicants, so long as the user experience is not compromised? Can any obstacles be overcome with user testing and outreach?

14. *Interaction with State and Local Procurement Rules.* E-Rate applicants are required to comply with all applicable state and local procurement rules, in addition to the E-Rate competitive bidding rules. What are the existing state procurement laws, local procedures and best practices that promote fair and open competition? Would the creation of a bidding portal conflict with these state and local procurement requirements? Would adopting an E-Rate bidding portal require service providers submitting bids in certain jurisdictions to submit bids in more than one way because of existing state or local requirements? If so, the Commission seeks more information on the specific circumstances in which service providers are required to submit their bids for eligible services through other mechanisms. If, for example, certain state or local requirements mandate that service providers submit bids directly to applicants such as through email, or through another online platform that would allow applicants to view bids before they would be permitted to under

any new E-Rate requirements, how might that impact the usefulness of a USAC-administered portal? Other state law requirements may include a mini-bid process when selecting vendors from a multiple award state master contract. Would the bidding portal interfere with applicants who use a state master contract that requires a mini-bid process? In addition, some states may have requirements relating to public disclosure of bids, prequalification of bidders and treatment of proprietary or confidential information. How should the Commission take those requirements into account in establishing a bidding portal? Although the current E-Rate competitive bidding requirements apply in addition to state and local competitive bidding requirements and are not intended to preempt such state or local requirements, the Commission seeks comment on how to address any apparent conflicts with the goals the Commission is attempting to achieve through the proposals stated herein. Additionally, the Commission is aware that certain state, local or other requirements, as well as other factors, may dictate varying procurement timeframes and processes for different applicants in the E-Rate program. The Commission seeks comment on how the use of the proposed E-Rate competitive bidding portal or an imposed waiting period could impact procurement timing for these applicants.

15. *Other Bidding Portal Considerations.* Are there potential obstacles the Commission should examine? For example, or pose technical challenges? The Commission also seeks comment on the impact of these proposals on applicants' bidding processes, including their timing for review and selection of providers.

16. The use of the bidding portal would not be required for the procurement of services that have been granted a competitive bidding exemption per the Commission's rules. Are there any other scenarios in which E-Rate participants should not be required to use the bidding portal? Are there any functions of the bidding portal that should be used by applicants with exemptions to help USAC review and ascertain compliance with competitive bidding rules? For example, for those applicants using state master contracts, is there documentation that applicants should be required to upload into the portal to demonstrate compliance with the E-Rate rules? The Commission seeks comment on any additional considerations that may impact applicants' and service providers' use of the bidding portal.

17. E-Rate program applicants and the Rural Health Care (RHC) program applicants currently submit different information to USAC at different points in their respective application processes. E-Rate applicants routinely submit bidding and contract documentation if requested by USAC or auditors as part of pre-commitment reviews (*e.g.,* standard PIA questions concerning bidding or special compliance competitive bidding reviews); during post-commitment comprehensive audits; and, during payment quality assurance reviews for computing the percentage of improper payments that must be reported annually to Congress. By contrast, in the RHC program, applicants are required to ''submit documentation to support their certifications that they have selected the most cost-effective option'' at the time a funding request is submitted to USAC. RHC program applicants must also submit contract documentation with their funding requests.

18. The Commission proposes to align the competitive bidding documentation requirements of the E-Rate program with RHC program rules. Under this proposal, E-Rate applicants would similarly be required to submit documentation demonstrating compliance with the competitive bidding rules and requirements at the time they submit their FCC Forms 471 to seek funding in the E-Rate program. The Commission seeks comment on this proposal. Should applicants in the E-Rate program be required to submit the same competitive bidding documentation with their funding requests as required in the RHC program? Is such a requirement appropriate and necessary? Is more or less information needed from E-Rate applicants to demonstrate program compliance? For example, are the bidding materials the portal would already capture, such as the bids and related communications, plus the applicant submission of its bid comparison documentation, sufficient for compliance review? Or, should the Commission consider requiring the submission of additional documentation? For example, if applicants do not receive any bids in response to their posted requests, should applicants be required to provide other documentation explaining how they selected their selected service provider? Would requiring applicants to provide contracting documents help applicants demonstrate compliance and help protect the program from fraud, waste and abuse? Are there other factors to take into consideration, such as the size of the applicant or the amount of their new contracts?

19. The Commission also seeks comment on whether there could or should be controls in the process to prevent applicants from proceeding with filing their FCC Forms 471 before submitting required competitive bidding and contract documentation. For example, should there be a system-implemented control put in place and should applicants not have access to file FCC Forms 471 in EPC until required documents are uploaded into the portal? Or, would it be less burdensome on both applicants and USAC to direct USAC to not process FCC Forms 471 until the required documentation has been filed?

20. The Commission seeks to facilitate greater transparency for USAC and them into the bidding process to help minimize fraud risk. The lack of transparency in the bidding process makes it more challenging for USAC and the Commission to ascertain compliance with E-Rate program rules. When applicants are not able to provide bidding documentation to show compliance with the Commission's rules upon request, USAC must render the request as non-compliant and deny funds, or if findings regarding lack of competitive bidding documentation are made pursuant to audit, and funds have been disbursed, these are deemed improper payments and funding must be returned. Similarly, when applicants submit bidding documentation after the fact, there is less certainty about the validity of the bidding process. The Commission seeks comment on its proposal to align E-Rate rules with RHC obligations by requiring applicants to submit competitive bidding documentation to demonstrate compliance with the Commission's rules.

21. Section 54.516 requires applicants to retain bids and other documentation related to E-Rate-supported services for at least 10 years after the later of the last day of the applicable funding year or the service delivery deadline, and to produce that documentation at the request of USAC, the Commission, or state or other federal agencies.

22. After the competitive bidding process is complete, the Commission anticipates that all documentation associated with the FCC Form 470 Service Request (*e.g.,* bids, bidder questions and related correspondence, selection documentation, contract documentation) could be securely stored in the bidding portal. Using the portal as a repository of these documents could serve to minimize the need for outreach and improve process efficiencies for USAC and E-Rate

program participants. The Commission seeks comment on the use of the portal as a repository of documents and how this might serve the public interest by placing fewer burdens on participants in the program. Are there any alternatives the Commission should consider?

23. The Commission seeks comment on how the use of the bidding portal for document storage relates to the Commission's E-Rate recordkeeping requirements, codified at § 54.516 of the Commission's rules. Should E-Rate participants be exempt from certain recordkeeping requirements if participants properly submitted the documents into the portal? Should applicants and service providers be permitted access to their stored competitive bidding documents for a period long enough to be able to comply with recordkeeping requirements? Also, if E-Rate program participants retain access to their records, should this access be afforded to them in a way to permit them to produce the records at the request of any representative (including any auditor) appointed by a state education department, USAC, the Commission, or any local, state or federal agency with jurisdiction over the entity, as is required by § 54.516(b)? The Commission seeks comment on whether there are any legal or other barriers to having E-Rate program participants comply with documentation and recordkeeping requirements by operation of using the bidding portal to store their competitive bidding records.

24. Recognizing that E-Rate competitive bidding can be an iterative process, the Commission seeks comment on how it can best use the portal to accommodate related steps of the process. How can the portal replicate or enhance the typical activities that can and do occur during the competitive bidding process and are necessary for successful bidding outcomes for applicants? For example, during procurement periods service providers are typically able to submit questions about requests for service in FCC Forms 470 and Requests for Proposals (RFPs) and receive answers from the applicants. All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process as required by the Commission's rules. Likewise, applicants may have questions about bid responses for service providers that lead to clarifications about bids. The Commission seeks comment on whether these activities should be required to occur in the portal. If so, the Commission proposes that questions and answers about service requests and RFPs be anonymously made available and viewable to the applicants and all interested bidders for the requested services, and the portal should be used to track and store this correspondence. The Commission seeks comment on this proposal. Also, the Commission seeks comment on how the portal should handle clarifications sought by applicants about bids that have been submitted and made available for review.

25. The Commission seeks comment on what other types of communications between service providers and applicants and procurement activities should be captured in the portal, and how to implement this in a way that is streamlined and easy to use for E-Rate program participants. Are there other types of functionality that should be considered for the bidding portal, and how should these functions be implemented in a way that will help support fair and open competitive bidding?

26. The Commission also seeks comment on those procurement processes that facilitate bidding in stages, potentially including initial and subsequent rounds of bidding (*e.g.,* requests for best and final offers). Because these are procurement steps that effectively extend the competitive bidding period, how should they be captured in the bidding portal and how would this impact the proposal in this document to implement a time period when bids are withheld from applicants? How could these processes be replicated and captured in the bid portal in a way that maintains anonymity and refrains from bid disclosure yet promotes transparency? Would the use of a bidding portal interfere with a multi-stage procurement process and if so, how?

27. Implementation of a competitive bidding portal would require significant development and implementation resources, from the Commission, USAC, and E-Rate stakeholders. If adopted, the Commission proposes that USAC, working with the Wireline Competition Bureau (Bureau) and the Office of Managing Director (OMD), initiate technical development of a competitive bidding portal as soon as possible, with a goal of making it available for funding year 2024. The Commission further proposes E-Rate stakeholder outreach and engagement to ensure that the bidding portal meets the needs of applicants and service providers and facilitates a smooth transition. To the extent necessary, the Commission proposes delegating authority to the Bureau and OMD to address implementation details that may arise, consistent with any rules that are ultimately adopted. By engaging stakeholders and empowering the Bureau and OMD to resolve technical and logistical implementation issues, the Commission anticipates that a competitive bidding portal could be completed efficiently and effectively. The Commission seeks comment on these proposals, including the proposed implementation timeframe. Would launching the portal so that it would be operational for the start of the funding year 2024 competitive bidding period be feasible in light of the technical and logistical challenges involved? The Commission notes that the bidding portal would need to be completed and live by July 1, 2023, the first day to initiate competitive bidding processes for funding year 2024. Is there sufficient time to design, develop, and implement a bidding portal by July 1, 2023? If the portal opens on July 1, 2023, will this allow enough time for applicants and service providers to receive training on how to use the portal to be able to successfully submit and receive bids for funding year 2024? Are there any other issues that may arise if the Commission shifts from the current approach to a centralized competitive bidding portal? Commenters are invited to raise any operational, legal, logistical, or administrative concerns that the Commission has not already identified.

28. The Commission proposes amending § 54.503 of the Commission's rules to require service providers to submit bids responsive to FCC Forms 470 in a bidding portal. The Commission seeks comment on other related rule changes, including the proposal for USAC to withhold bids from applicants for a minimum period and to require applicants to submit competitive bidding compliance documentation at the time they seek E-Rate funding by submitting FCC Forms 471. The Commission seeks comment on this proposed rule, and whether there are other conforming rule changes that the Commission should consider. Relatedly, the Commission seeks comment on any impacts these changes, if adopted, would or should have on existing E-Rate program forms and the certifications to those forms.

29. Finally, the Commission proposes to make an additional minor amendment to § 54.503(b) of the Commission's rules which incorrectly indicated that the exemption to the E-Rate competitive bidding requirements is in § 54.511(c) when instead it is referenced in § 54.503(e). Are there other rule changes that may be needed

as a result of the Commission's proposals?

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

III. Procedural Matters

A. Paperwork Reduction Act

31. This proposed rule may contain new or modified information collection(s) subject to the Paperwork Reduction Act (PRA) of 1995. If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

32. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Modernizing the E-Rate Program for Schools and Libraries Program, et al, NPRM. Written comments are requested on this IRFA. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. Responsive comments must be identified as responses to the IRFA and must be filed on or before 30 days from publication of this item in the **Federal Register**. Reply comments to the IRFA must be filed on or before 60 days from publication of this item in the **Federal Register**.

33. The rules the Commission proposes in this proposed rule are directed at improving the competitive bidding process for the E-Rate program. The new requirements, if adopted, would require service providers to submit bids in response to requests for services into a bidding portal managed by USAC. The requirements, if adopted, may also require an applicant to wait for a period of time before it can review service providers' responsive bids. The proposed regulations would also require E-Rate applicants to submit competitive bidding documentation into the bidding portal to help demonstrate compliance with the rules, *e.g.,* bid comparison documentation. One of the objectives of the proposed rule changes and implementation bidding portal is to assist applicants in complying with the competitive bidding requirements and related documentation requirements.

34. The legal basis for this proposed rule is contained in sections 1 through 4, 201, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201, 254, 303(r), and 403.

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

36. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

37. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

38. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

39. Small entities potentially affected by the proposed regulations herein include Schools and Libraries, Telecommunications Service Providers, Internet Service Providers, and Vendors of Internal Connections.

40. The proposal under consideration would require service providers that seek to bid on requests for services in the E-Rate program, bid in a portal. An additional proposal would require E-Rate program applicants to submit bidding documentation into the bidding portal before they seek funding for eligible services to demonstrate compliance with program rules for competitive bidding. The records that would be requested for submission into the portal are the same records that program participants must retain and must produce upon request to the Commission, USAC, and other entities with authority over the participants.

41. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has

considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

42. In this proposed rule, the Commission seeks comment on a reform to the E-Rate program. The Commission seeks to update program rules and administration for applicants and service providers that participate in the E-Rate program and therefore must follow the E-Rate competitive bidding requirements. The Commission recognizes that its proposed regulations would impact small entities. The rules the Commission proposes may decrease recordkeeping burdens on small entities and may increase reporting burdens on small entities.

43. *Service providers required to submit bids on services in bidding portal.* By requiring bidding to take place in the portal, the portal would capture and save the bids, as well as any related applicant and service provider correspondence. While this may not eliminate recordkeeping requirements, it should serve to make compliance with these requirements less burdensome.

44. *Compliance burdens.* Service providers currently bid to provide services in the E-Rate program in a variety of ways, and the bidding portal requirement may be in addition to bidding requirements that may exist outside of universal service program rules. Implementing the Commission's proposed regulations may also impose some burden on small applicant entities by requiring them to submit competitive bidding compliance documentation in the portal before seeking funding for requested services.

B. Ordering Clauses

45. Accordingly, *it is ordered,* that, pursuant to the authority found in sections 1 through 4, 201, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

46. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the NPRM on or before 60 days from publication of this document in the **Federal Register**, and reply comments on or before 90 days from publication of this document in the **Federal Register**.

List of Subjects in 47 CFR Part 54

Communications common carriers, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications,.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Regulations

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

PART 54—UNIVERSAL SERVICE

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

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

■ 2. Amend § 54.503 by revising paragraphs (b) and (c)(4), and adding paragraphs (c)(5) and (6) to read as follows:

§ 54.503 Competitive Bidding Requirements.

* * * * *

(b) *Competitive bid requirements.* Except as provided in paragraph (e) of this section, an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(c) * * *

(4) After posting on the Administrator's website an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. Providers of services shall not respond to a request for services directly to the requesting entity and shall not reveal responses to other parties, including other providers of services, but shall submit responses through a secured website portal (''bidding portal'' or ''bid portal'') managed by the Administrator. The requesting entity shall then wait at least 28 days from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

(5) Service providers shall respond to requests for services through a secured website portal (''bidding portal'' or ''bid portal'') managed by the Administrator, by uploading bids into the portal. Service providers will not have access to the bids of other service providers. Service providers may anonymously submit questions or other inquiries to applicants through the bidding portal, to which applicants must respond during the competitive bidding process. No communication between service providers and applicants related to the competitive bid or the competitive bidding process is permitted outside of the bidding portal during the competitive bidding process. All potential program bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.

(6) After making commitments with the selected providers of services, and prior to submitting an FCC Form 471 seeking to receive discounts on eligible services, eligible schools, libraries, or consortia shall upload the following to the bidding portal:

(i) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have carefully considered and selected the most cost-effective bid with price being the primary factor considered, including the bid evaluation criteria, and the following documents (as applicable, and to the extent not already captured and stored as part of competitive bidding process): Completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated the bids (along with their title/role/relationship to the applicant), memos, board minutes, or similar documents related to the service provider selection/award; copies of notices to winners; and any correspondence with the service providers prior to and during the competitive bidding, evaluation, and award phase of the process.

(ii) *Contracts or other documentation.* All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected; costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.,* if services are not being provided on a

month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated after the Allowable Contract Date (ACD) by the applicant. If the services are provided by another legally binding agreement or on a month-to-month basis, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information.

[FR Doc. 2022–00684 Filed 1–26–22; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 87, No. 18

Thursday, January 27, 2022

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 24, 2022.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 these information collections are best assured of having their full effect if received by February 28, 2022. 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.

Agricultural Marketing Service

Title: Application for Plant Variety Protection Certificate and Objective Description of Variety.

OMB Control Number: 0581–0055.

Summary of Collection: The Plant Variety Protection Act (PVPA) (December 24, 1970; 84 Stat. 1542, 7 U.S.C. 2321 *et seq.*) was established to encourage the development of novel varieties of sexually-reproduced plants and make them available to the public, providing intellectual property rights (IPR) protection to those who breed, develop, or discover such novel varieties, and thereby promote progress in agriculture in the public interest. The PVPA is a voluntary user funded program that grants intellectual property ownership rights to breeders of new and novel seed-and tuber-reproduced plant varieties. To obtain these rights the applicant must provide information that shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable, as the law requires. Applicants are provided with applications to identify the information that is required to issue a certificate of protection.

Need and Use of the Information: Applicants must complete the ST–470, ''Application for Plant Variety Protection Certificate,'' and the ST–470 series of forms, ''Objective Description of Variety'' along with other forms. The Agricultural Marketing Service will use the information from the applicant to be evaluated by examiners to determine if the variety is eligible for protection under the PVPA. If this information were not collected there will be no basis for issuing certificate of protection, and no way for applicants to request protection.

Description of Respondents: Private Sector.

Number of Respondents: 95.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,046.

Agricultural Marketing Service

Title: Local Food Purchase Assistance Cooperative Agreement Program (LFPA).

OMB Control Number: 0581–0330.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), as amended, directs and authorizes USDA to administer Federal cooperative agreements programs. AMS cooperative agreement programs are administered according to OMB Guidance for Cooperative Agreements, which is based on OMB's regulations under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (85 FR 49506; December 13, 2020). Information collection requirements in this emergency request are needed for AMS to administer a new noncompetitive cooperative agreement program, in accordance with Section 1001(b)(4) of the American Rescue Plan Act (Pub. L. 117–2) (Act). USDA will collect information for this new program to award cooperative agreements and provide other assistance to maintain and improve food and agriculture supply chain resiliency.

Need and Use of the Information: Since the LFPA is a voluntary program, respondents request or apply for this specific competitive cooperative agreement, and in doing so, they provide information. The information collected is used only by authorized representatives of USDA, AMS, Commodity Procurement Program to certify that cooperative agreement participants are complying with applicable program regulations, and the data collected is the minimum information necessary to effectively carry out program requirements.

Information collection requirements in this request are essential to carry out the intent of Act, to provide respondents the type of service they request and to administer the program.

Description of Respondents: State, Local, and Tribal Governments.

Number of Respondents: 75.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 4,732.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–01606 Filed 1–26–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 24, 2022.

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 February 28, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this 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 and Nutrition Service

Title: FNS Information Collection Needs due to COVID–19.

OMB Control Number: 0584–0654.

Summary of Collection: As the Food and Nutrition Service (FNS) is responding to the COVID–19 Coronavirus pandemic, it is implementing and approving a number of waivers and program adjustments to ensure Americans in need can access nutrition assistance during the crisis while maintaining recommended practices. Two pieces of legislation have detailed many of the program adjustments available to FNS. The Families First Coronavirus Response Act (Pub. L. 116–127) and the Coronavirus Aid, Relief and Economic Security (CARES) Act (Pub. L. 116–136) provided a number of program adjustments and additional funding, respectively. The statutes describing these waivers and flexibilities also have reporting requirements. In addition, Section 12(l) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(l)) (NSLA) allows FNS to waive statutory and regulatory requirements established under the NSLA or Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) for a State or eligible service provider administering a Child Nutrition Program (CNP). FNS issues statewide waivers under NSLA waiver authority in response to State agencies' requests to facilitate the ability for Program operators to carry out the purposes of CNPs during COVID–19-related operations. These flexibilities also carry associated reporting requirements.

Need and Use of the Information: The information enables the Food and Nutrition Service to examine waiver applications and provide reporting data required by the Families First Coronavirus Recovery Act (FFCRA) and Coronavirus Aid, Relief and Economic Security (CARES) Act.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 1,349.

Frequency of Responses: Reporting: On occasion; Weekly.

Total Burden Hours: 11,549.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–01579 Filed 1–26–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Request for Nominations of Members for the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board, Specialty Crop Committee (SCC), Citrus Disease Subcommittee (CDS), and National Genetic Resources Advisory Council (NGRAC); Correction

AGENCY: Research, Education, and Economics, United States Department of Agriculture (USDA).

ACTION: Notice of Correction; Solicit nominations for memberships for the NAREEE Advisory Board, SCC, CDS, and the NGRAC.

SUMMARY: The United States Department of Agriculture published a notice of solicitation of nominations for memberships to announce the opening of the solicitation for nominations to fill vacancies on the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board and its committees and subcommittees for Fiscal Year 2023 and any vacancies that may occur in the current fiscal year in the **Federal Register** on January 14, 2022 [FR Doc. 2022–00650 Filed 1–13–22; 8:45 a.m.]. This correction Notice (correction) is being issued to direct individuals to the new website link location for the application form (AD–755 Form) *https://www.usda.gov/sites/default/files/documents/ad-755.pdf* on USDA's website.

FOR FURTHER INFORMATION CONTACT: Kate Lewis, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue SW, Room 6019, The South Building, Washington, DC 20250–2255; telephone: 202–720–3684 or email: *nareee@usda.gov.* Committee website: *https://nareeeab.ree.usda.gov/*

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc 2022–00650 on January 14, 2022 (87 FR 2403), in column 1 of page 2404, correct ''Instructions'' to read:

Instructions

The following information must be included in the package of materials submitted for each; individual being nominated for consideration: (1) AD–755 *https://www.usda.gov/sites/default/files/documents/ad-755.pdf.* stating your full birth name and completed application in its entirety; (2) A letter(s) of nomination stating the Board (Board Category)/Subcommittee (SCC, CDS, NGRAC) *must* be identified (3) 1 page bio of nominee; and (4) a current copy of the nominee's resumé. You may apply for as many categories on the Advisory Board and Committees and/or subcommittee(s) and this must be stated in your application and nomination letter(s). Nomination packages may be submitted directly by the individual being nominated or by the person/organization recommending the candidate.

Done at Washington, DC, this day of January 19, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–01574 Filed 1–26–22; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 24, 2022.

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 February 28, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: Organizational Information.

OMB Control Number: 0524–0026.

Summary of Collection: The National Institute of Food and Agriculture (NIFA) has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and higher education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and the intent of Congress by administering formula and grant funds appropriated for agricultural research, extension, and higher education. Before awards can be made, certain information is required from applicant to effectively assess the potential recipient's capacity to manage Federal funds. NIFA will collection information using form NIFA 666, ''Organizational Information.''

Need and Use of the Information: The following information will be collected from the form and the documents from the applicant: Legal name of the grantee, certification that the organization has the legal authority to accept Federal funding, identification and signatures of the key officials of the organization, the organization's practices in regard to compensation rates and benefits of employees, insurance for equipment, subcontracting with other organizations, etc., as well as the financial condition of the organization. NIFA will collect information to determine that applicants recommended for awards will be responsible recipients of Federal funds. The information pertains to organizational management and financial matters of the potential grantee. If the information were not collected, it would not be possible to determine that the prospective grantees are responsible.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; State, Local, or Tribal Government; Federal Government.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 945.

National Institute of Food and Agriculture

Title: NIFA Grant Application.

OMB Control Number: 0524–0039.

Summary of Collection: The United States Department of Agriculture (USDA), National Institute of Food and Agriculture (NIFA) sponsors ongoing agricultural research, education, and extension programs under which competitive, formula, and special awards of a high-priority nature are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101), the Smith-Lever Act, and other legislative authorities.

Before awards can be issued, certain information is required from applicants as part of an overall application. In addition to a project summary, proposal narrative, vitae of key personnel, and other pertinent technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. This information is obtained via applications through the use of federal-wide standard grant application forms and NIFA specific application forms. Because competitive applications are submitted, many of which necessitate review by peer panelists, it is particularly important that applicants provide the information in a standardized fashion to ensure equitable treatment for all.

Need and Use of the Information: The fundamental purpose of the information requested is for provide information that is not obtained in the federal-wide application forms but is necessary for the NIFA proposal and award process. In addition to federal-wide standard grant application forms, NIFA will use the following program and agency specific components as part of its application package: Letter of Intent Form, Supplemental Information Form; Application Type Form; Form NIFA–2008, Assurance Statement(s); and Form NIFA–2010, Fellowships/Scholarships Entry/Annual Update/Exit Form.

Description of Respondents: Individuals or household; Federal Government; State, Local or Tribal Government.

Number of Respondents: 15,153.

Frequency of Responses: Recordkeeping; Reporting: Weekly; Monthly; Annually.

Total Burden Hours: 18,415.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–01604 Filed 1–26–22; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of proposed new fee site.

SUMMARY: The Pike and San Isabel National Forest is proposing to charge a new fee at one recreation site listed in **SUPPLEMENTARY INFORMATION** of this notice. Funds from fees would be used

for operation, maintenance, and improvements of this recreation site. An analysis of nearby developed recreation sites with similar amenities shows the proposed fee is reasonable and typical of similar sites in the area.

DATES: If approved, the new fee would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Pike and San Isabel National Forest, 2840 Kachina Drive Pueblo, CO 81008.

FOR FURTHER INFORMATION CONTACT: Ben Lara, District Recreation Program Manager, 719–530–3933, or *Benjamin.Lara@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. The fee is only proposed at this time and will be determined upon further analysis and public comment. Reasonable fees, paid by users of these sites, will help ensure that the Forest can continue maintaining and improving recreation sites like this for future generations.

The Forest is proposing a new fee at Iron City Cabin for $120 per night.

New fees would provide increased visitor opportunities as well as increased staffing to address operations and maintenance needs and enhance customer service. Once public involvement is complete, these new fees will be reviewed by the Rocky Mountain Regional Office prior to a final decision and implementation.

Advanced reservations for this cabin will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges an $8.00 fee for reservations.

Dated: January 21, 2022.

Sandra Watts,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–01538 Filed 1–26–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of web briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a web briefing on Tuesday, March 15, 2022, at 12:00 p.m. ET to hear testimony on Legal Financial Obligations in the state.

DATES: The meeting will take place via Webex on Tuesday, March 15, 2022, at 12:00 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION:

Online Registration (Audio/Visual): https://tinyurl.com/5y95te2k.

Telephone (Audio Only): Dial (800) 360–9505 USA Toll Free; Access Code: 2761 443 7596. Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1 (800) 877–8339 and providing the Service with the conference details found at the web link above. To request additional accommodations, please email *vmoreno@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the phone number above.

Agenda

I. Welcome & Roll Call
II. Opening Statement
III. Briefing
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: January 24, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01609 Filed 1–26–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 12:00 p.m. CT on Thursday, February 10, 2022. The purpose of this meeting is to discuss the Committee's project on policing practices in the state.

DATES: The meeting will take place on Thursday, February 10, 2022, at 12:00 p.m. CT.

Link to Join (Audio/Visual): https://tinyurl.com/2p8z8hm8.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2764 616 4928.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference details found through

registering at the web link above. To request additional accommodations, please email *dbarreras@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Minnesota Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Civil Rights Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: January 24, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01662 Filed 1–26–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0017]

RIN 0691–XC121

BE–9: Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE–9). The data collected on the BE–9 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–9 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–9 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. offices, agents, or other representatives of foreign airline operators that transport passengers or freight and express to or from the United States, whose total covered revenues or total covered expenses were $5 million or more during the previous year, or are expected to meet or exceed that amount during the current year. See BE–9 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign airline operators' revenues and expenses in the United States, and count of passengers transported to, or from, the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–9 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-9help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0068. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for this collection of information is estimated to average 6 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0068, via email at OIRA_*Submission@omb.eop.gov.*

(Authority: 22 U.S.C. 3101–3108.)

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01660 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–02–2022]

Foreign-Trade Zone 26—Atlanta, Georgia Application for Production Authority OFS Fitel, LLC (Optical Fiber Products) Carrollton, Georgia

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting production authority on behalf of OFS Fitel, LLC (OFS Fitel), located in

Carrollton, Georgia. The application conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.23) was docketed on January 20, 2022. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the FTZ Board's website—accessible via *www.trade.gov/ftz.*

The OFS Fitel facility (518 employees, 44.49 acres) is located within Site 40 of FTZ 26. The facility is used for the production of optical fiber products. In 2020, OFS Fitel requested production authority in a notification proceeding (15 CFR 400.22 and 400.37). After an initial review, the requested production authority was approved subject to restrictions that included a requirement that optical fiber and optical bundles be admitted to the zone in privileged foreign (PF) status (19 CFR 146.41), precluding inverted tariff benefits on those inputs (see B–59–2020, 85 FR 61719–61720, September 30, 2020). The pending application proposes to remove that restriction—which would allow OFS Fitel to choose the duty rates during customs entry procedures that apply to optical fiber cable (duty-free) and optical fibers/bundles/ribbon (duty rate, 6.7%) for the following foreign-status materials/components (representing an average 27% of the value of the finished product): Drawn optical fiber and drawn optical fiber bundles (duty rate, 6.7%). The request indicates that those materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

In accordance with the FTZ Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is March 28, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 12, 2022.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: January 21, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–01543 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: On August 2, 2021, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from Taiwan. The period of review (POR) is July 1, 2019, through June 30, 2020. We received no comments or requests for a hearing. We continue to find that sales of subject merchandise by Nan Ya Plastics Corporation (Nan Ya) were not made at less than normal value during the POR. We also continue to find that Shinkong Materials Technology Corporation (SMTC) had no shipments of subject merchandise during the POR.

DATES: Applicable January 27, 2022.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2021, Commerce published the preliminary results for this administrative review.[1] On August 25, 2021, we issued a supplemental questionnaire to Nan Ya.[2] The petitioners[3] requested an extension of the briefing schedule on August 25, 2021.[4] On August 27, 2021, we notified parties that we would reset the deadlines to submit case briefs at a later date.[5] On September 2, 2021, Nan Ya submitted its response to our supplemental questionnaire.[6] On November 15, 2021, Commerce extended the deadline for these final results to January 28, 2022.[7] Commerce established the revised deadlines for the briefing schedule on November 23, 2021.[8] No interested party submitted comments or requested a hearing in this administrative review. Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order.[9]

The products covered by the *Order* are all gauges of raw, pretreated, or primed PET film, whether extruded or coextruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of polyethylene terephthalate film, sheet, and strip are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the *Order* is dispositive.

Final Determination of No Shipments

Because we received no comments on the *Preliminary Results,* we have made no changes to the preliminary

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[1] *See Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 41443 (August 2, 2021) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Commerce's Letter, ''2019–2020 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet and Strip (PET Film): Supplemental Questionnaire,'' dated August 25, 2021.

[3] The petitioners are DuPont Teijin Films; Mitsubishi Polyester Film, Inc.; and SKC, Inc.

[4] *See* Petitioners' Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Taiwan: Request for Extension of Briefing Schedule,'' dated August 25, 2021.

[5] *See* Memorandum, Extending Briefing Schedule, ''2019–2020 Antidumping Duty Administrative Review of Polyethylene Terephthalate (PET) Film, Sheet and Strip from Taiwan,'' dated August 27, 2021.

[6] *See* Nan Ya's Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Taiwan: Supplemental Questionnaire Response,'' dated September 2, 2021 (Nan Ya's SQR).

[7] *See* Memorandum, ''2019–2020 Antidumping Duty Administrative Review of Polyethylene Terephthalate (PET) Film, Sheet, and Strip from Taiwan,'' dated November 15, 2021.

[8] *See* Memorandum, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan-Briefing,'' dated November 23, 2021.

[9] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR at 46566 (July 15, 2002) (*Order*).

determination of no shipments. Based on our analysis of U.S. Customs and Border Protection (CBP) information and information provided by SMTC and its affiliate, Shinkong Synthetic Fibers Corporation, we continue to determine that SMTC had no shipments of the subject merchandise during the POR.[10]

Final Results of Review

As noted above, Commerce received no comments concerning the *Preliminary Results.* Nan Ya submitted values for U.S. inventory carrying costs, which had been inadvertently omitted in its prior filings.[11] We incorporated these corrections into these final results [12] and continue to find that sales of subject merchandise by Nan Ya were not made at less than normal value during the POR. Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results* and the accompanying Preliminary Decision Memorandum.[13] The final weighted-average dumping margin for the period July 1, 2019, through June 30, 2020, for Nan Ya is as follows:

Producer/exporter	Weighted-average margin (percent)
Nan Ya Plastics Corporation	0.00

Assessment Rates

Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of the final results of this administrative review. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). Because we calculated a zero margin in the final results of this review for Nan Ya, in accordance with 19 CFR 351.212, we will instruct CBP to liquidate the appropriate entries without regard to dumping duties.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Nan Ya will be zero, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or in the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the investigation, the cash-deposit rate will continue to be the all-others rate of 2.40 percent, which is the all-others rate established by Commerce in the LTFV investigation.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

Commerce will disclose to interested parties the calculations performed in connection with the final results within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a 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(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order 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 of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 21, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–01599 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–DS–P

[10] For a full discussion of this determination, *see Preliminary Results* PDM.

[11] *See* Nan Ya's SQR at 7.

[12] *See* Memorandum, ''Nan Ya's Final Analysis Memorandum,'' dated concurrently with the signature of this **Federal Register** notice.

[13] *See Preliminary Results* PDM.

[14] *See* 19 CFR 351.106(c)(2).

[15] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film),* 67 FR at 44174, 44175 (July 1, 2002), unchanged in *Order; see also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR 35474 (May 20, 2002).

DEPARTMENT OF COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: Based upon the timely withdrawal of all review requests, the Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review and the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable January 27, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Based upon timely requests for review, Commerce initiated administrative reviews of certain

companies for the periods of review and the AD and CVD orders listed in the table below, pursuant to 19 CFR 351.221(c)(1)(i).[1] All requests for these reviews have been timely withdrawn.[2]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the periods noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

	Period of review
AD Proceedings	
Japan: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (over 4½ inches), A–588–850	6/1/2020–5/31/2021
Malaysia: Polyethylene Retail Carrier Bags, A–557–813	8/1/2020–7/31/2021
Mexico: Refillable Stainless Steel Kegs, A–201–849	10/1/2020–9/30/2021
Socialist Republic of Vietnam: Certain Steel Nails, A–552–818	7/1/2020–6/30/2021
Taiwan: Forged Steel Fittings, A–583–863	9/1/2020–8/31/2021
Thailand: Glycine, A–549–837	10/1/2020–9/30/2021
Turkey: Large Diameter Welded Pipe, A–489–833	5/1/2020–4/30/2021
The People's Republic of China:	
Certain Steel Grating, A–570–947	7/1/2020–6/30/2021
Electrolytic Manganese Dioxide, A–570–919	10/1/2020–9/30/2021
CVD Proceedings	
Italy: Certain Pasta, C–475–819	1/1/2020–12/31/2020
Socialist Republic of Vietnam: Utility Scale Wind Towers, C–552–826	12/13/2019–12/31/2020
The People's Republic of China:	
Certain Steel Grating, C–570–948	1/1/2020–12/31/2020
High Pressure Steel Cylinders, C–570–978	1/1/2020–12/31/2020
Turkey:	
Certain Pasta, C–489–806	1/1/2020–12/31/2020
Large Diameter Welded Pipe, C–489–834	1/1/2020–12/31/2020

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the periods of review noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this recission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this recission notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in these segments of these proceedings. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 21, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–01573 Filed 1–26–22; 8:45 am]

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 41821 (August 3, 2021); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034 (September 7, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811 (October 7, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 61121 (November 5, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 29, 2021).

[2] The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Standards and Performance Metrics for On-Road Autonomous Vehicles: Workshop

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Public Workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) will be hosting a virtual workshop on the development of Standards and Performance Metrics for On-Road Autonomous Vehicles on March 8–9, 2022. During this two-day event, attendees will have an opportunity to actively provide feedback in facilitated discussions regarding technical focus areas for NIST to develop standards, measurement science, and performance metrics for on-road autonomous vehicle technology. NIST will release a discussion draft that addresses the following technology areas: Artificial Intelligence, Cybersecurity, Communication, Perception, Infrastructure, and Safety, prior to the workshop. NIST will use stakeholder feedback from the workshop to revise the discussion draft.

DATES: The workshop will begin on March 8, 2022, at 9:00 a.m. Eastern Time, and will adjourn on March 9, 2022, at 5:00 p.m. Eastern Time. Registration will be open until midnight on March 7, 2022, or until registration reaches capacity.

ADDRESSES: The workshop will be held virtually via webinar. For instructions on how to participate in the workshop, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For questions about this workshop contact: Vinh Nguyen, U.S. Department of Commerce, National Institute of Standards and Technology (NIST), 100 Bureau Drive, Gaithersburg, MD 20899, telephone (301) 975–2455, email *autonomousvehicles@nist.gov.* Please direct media inquiries to NIST's Office of Public Affairs at (301) 975–2762.

SUPPLEMENTARY INFORMATION:

Registration

The workshop schedule and registration information are posted online at: *https://www.nist.gov/news-events/events/2022/03/standards-and-performance-metrics-road-autonomous-vehicles.*

Engagement

Other opportunities to engage in the development of standards and performance metrics in autonomous vehicles will be posted on the NIST Autonomous Vehicles web page as they become available (*https://www.nist.gov/programs-projects/nist-and-autonomous-vehicles*), and will be announced through the NIST Autonomous Vehicles mailing list (*https://groups.google.com/a/list.nist.gov/g/autonomousvehicles*).

Objectives

On-road autonomous vehicles are projected to influence key aspects of everyday life including transportation, goods delivery, manufacturing, public safety, and security. However, autonomous vehicles can pose a risk in the event of unexpected system performance. Goals of this workshop include the following:

- Solicit stakeholder feedback to identify key areas where NIST can develop standards and performance metrics to help advance the autonomous vehicle field.
- Foster a multidisciplinary community consisting of stakeholders from a variety of disciplines and domains in autonomous vehicles.

During the workshop, attendees will have an opportunity to actively provide feedback in facilitated discussions regarding technical focus areas for NIST to develop standards, measurement science, and performance metrics for on-road autonomous vehicle technology. NIST will release a discussion draft that addresses the following technology areas: Artificial Intelligence, Cybersecurity, Communication, Perception, Infrastructure, and Safety, prior to the workshop. NIST will then use stakeholder feedback from the panel and breakout sessions at the workshop to revise the discussion draft.

Authority: 15 U.S.C. 272(b) & (c).

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–01628 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB750]

East Coast Fisheries of the United States; Request for Comments

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

ACTION: Notice of public meetings via webinar.

SUMMARY: Several fishery management bodies on the East Coast of the U.S. are convening three public webinars to continue work on an initiative called *East Coast Climate Change Scenario Planning.* This is a joint effort of the Atlantic States Marine Fisheries Commission (ASMFC), the New England Fishery Management Council (NEFMC), the Mid-Atlantic Fishery Management Council (MAFMC), the South Atlantic Fishery Management Council (SAFMC), and NOAA Fisheries. The focus of the webinars will be to explore the key drivers of change that could shape East Coast fisheries over the next 20 years. There will be opportunity for questions and engagement from the public as well as a brief update on this multi-year initiative.

DATES: These webinars will be held on Monday, February 14, 2022, at 3 p.m.–4:30 p.m.; Wednesday, February 23, 2022, at 3 p.m.–4:30 p.m.; and Wednesday, March 2, 2022, at 3 p.m.–4:30 p.m.

ADDRESSES: The meetings will be held via webinar.

All meeting participants and interested parties are asked to register for each webinar individually from this website: *https://www.mafmc.org/climate-change-scenario-planning.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background: Climate change is a growing threat to marine fisheries worldwide. On the East coast of the United States, there is evidence of climate-related changes in distribution, abundance, and/or productivity of fishery resources. It is uncertain what the next couple of decades will bring, and how fishery management programs can best prepare to meet the challenges ahead. Over the next year, this joint effort will bring together researchers, fishery managers, fishery participants and others to discuss these questions and emerge with ideas and recommendations for how fishery management can potentially adapt to climate change.

The management bodies in this region have decided to employ a scenario planning framework to discuss these issues. Scenario planning is a way of exploring how fishery management may need to evolve over the next few decades as climate change becomes a

bigger issue. Specifically, scenarios are stories about possible future developments. This approach is designed to help stakeholders and managers think broadly about the future implications of climate change to help define what changes can potentially be made now to be better prepared.

Three introductory ''kick-off'' webinars were held in 2021 to explain the overall initiative and share draft objectives and possible outcomes of the work with the public. The next phase of this initiative, the exploration phase, includes another series of webinars outlined in this notice. The primary objective of these meetings is to share information about and discuss the key drivers of change that could shape East Coast fisheries over the next 20 years—which will then become the ''building blocks'' for scenario creation. Three separate webinars are planned, each dealing with a different area of driving forces/uncertainties that are shaped by climate change. The first on February 14, 2022, will cover oceanographic drivers of change (*e.g.,* ocean temperature, sea level rise, acidification, ocean currents). The second on February 23, 2022, will focus on biological drivers of change (*e.g.,* changing spatial distributions, health of stocks, habitat loss, rate of ecosystem change). And the last webinar on March 2, 2022, will focus on social and economic drivers of change (*e.g.,* competing ocean uses, community impacts, consumer demand). During each webinar a brief overview and status of the initiative will be presented followed by a more detailed presentation by a lead presenter outlining the current and future trends for each topic. Next, a small panel of experts will join the lead presenter to provide additional perspectives. Finally, there will be an opportunity for questions of the panelists and presenters as well as limited public comments at the end of each webinar.

Additional details about the webinars will be posted to this page once available: *https://www.mafmc.org/climate-change-scenario-planning.*

The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to: Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: January 24, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–01658 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB392]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off New Jersey and New York for Atlantic Shores Offshore Wind, LLC

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Atlantic Shores Offshore Wind, LLC (Atlantic Shores) for authorization to take marine mammals incidental to marine site characterization surveys off New Jersey and New York in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area OCS–A 0499. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year Renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notification. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notification of our decision.

DATES: Comments and information must be received no later than February 28, 2022.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Potlock@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25 megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses

(referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notification prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 16, 2021, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to marine site characterization surveys occurring in three locations (Lease Area and Export Cable Routes (ECR) North and South) off of New Jersey and New York in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS)–A 0499. NMFS deemed the application adequate and complete on December 13, 2021. Atlantic Shores' request is for take of a small number of 15 species of marine mammals (comprised of 16 stocks) by Level B harassment only. Neither Atlantic Shores nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued two IHAs to Atlantic Shores for similar work (85 FR 21198, April 16, 2020; 86 FR 21289, April 22, 2021 (Renewal)). As required, Atlantic Shores provided a monitoring report for the work performed under the 2020 IHA (85 FR 21198, April 16, 2020; available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization*).

At the time of developing this proposed IHA for Atlantic Shores' 2022 project, the 2021 (Renewal) monitoring report was not available as the renewed project is ongoing until its expiration date on April 19, 2022 (86 FR 21289; April 22, 2021). However, the 2020 monitoring report confirmed that Atlantic Shores had previously implemented the required mitigation and monitoring, and demonstrated that no impacts of a scale or nature not previously analyzed or authorized had occurred as a result of the activities conducted under the 2020 IHA.

Description of Proposed Activity

Overview

As part of its overall marine site characterization survey operations, Atlantic Shores proposes to conduct high-resolution geophysical (HRG) surveys in the Lease Area (OCS)-A 0499 and along potential submarine cable routes (ECRs North and South) to a landfall location in either New York or New Jersey.

The purpose of the proposed surveys are to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area and along export cable routes (ECRs). As many as three survey vessels may operate concurrently as part of the proposed surveys. Underwater sound resulting from Atlantic Shores' proposed site characterization survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The estimated duration of the surveys is expected to be up to 360 total survey days over the course of a single year within the three survey areas (Table 1). As multiple vessels (*i.e.,* three survey vessels) may be operating concurrently across the Lease Area and two ECRs, each day that a survey vessel is operating counts as a single survey day. For example, if three vessels are operating in the two ECRs and Lease Area concurrently, this counts as three survey days. This schedule is based on 24-hours of operations throughout 12 months. The schedule presented here for this proposed project has accounted for potential down time due to inclement weather or other project-related delays. Proposed activities would occur from April 20, 2022 through April 19, 2023 as to not overlap the Renewal IHA that expires after April 19, 2022.

TABLE 1—NUMBER OF SURVEY DAYS THAT ATLANTIC SHORES PLANS TO PERFORM THE DESCRIBED HRG SURVEY ACTIVITIES

Survey area	Number of active survey days expected [1]
Lease Area	120
ECR North	180
ECR South	60
Total	360

[1] Surveys in each area may temporally overlap; therefore, actual number of days of activity in a given year would be less than 360.

Specific Geographic Region

Atlantic Shores' proposed activities would occur in the Northwest Atlantic Ocean within Federal and state waters (Figure 1). Surveys would occur in the Lease Area and along potential submarine cable routes to landfall in either New York or New Jersey. Proposed activities would occur within the Commercial Lease of Submerged Lands for Renewable Energy Development in OCS–A 0499. The survey area is approximately 1,450,006 acres (2,265.6 square miles (mi^2); 5,868 square kilometers (km^2)) and extends approximately 24 nautical miles (nm; 28 miles (mi); 44 kilometers (km)) offshore.

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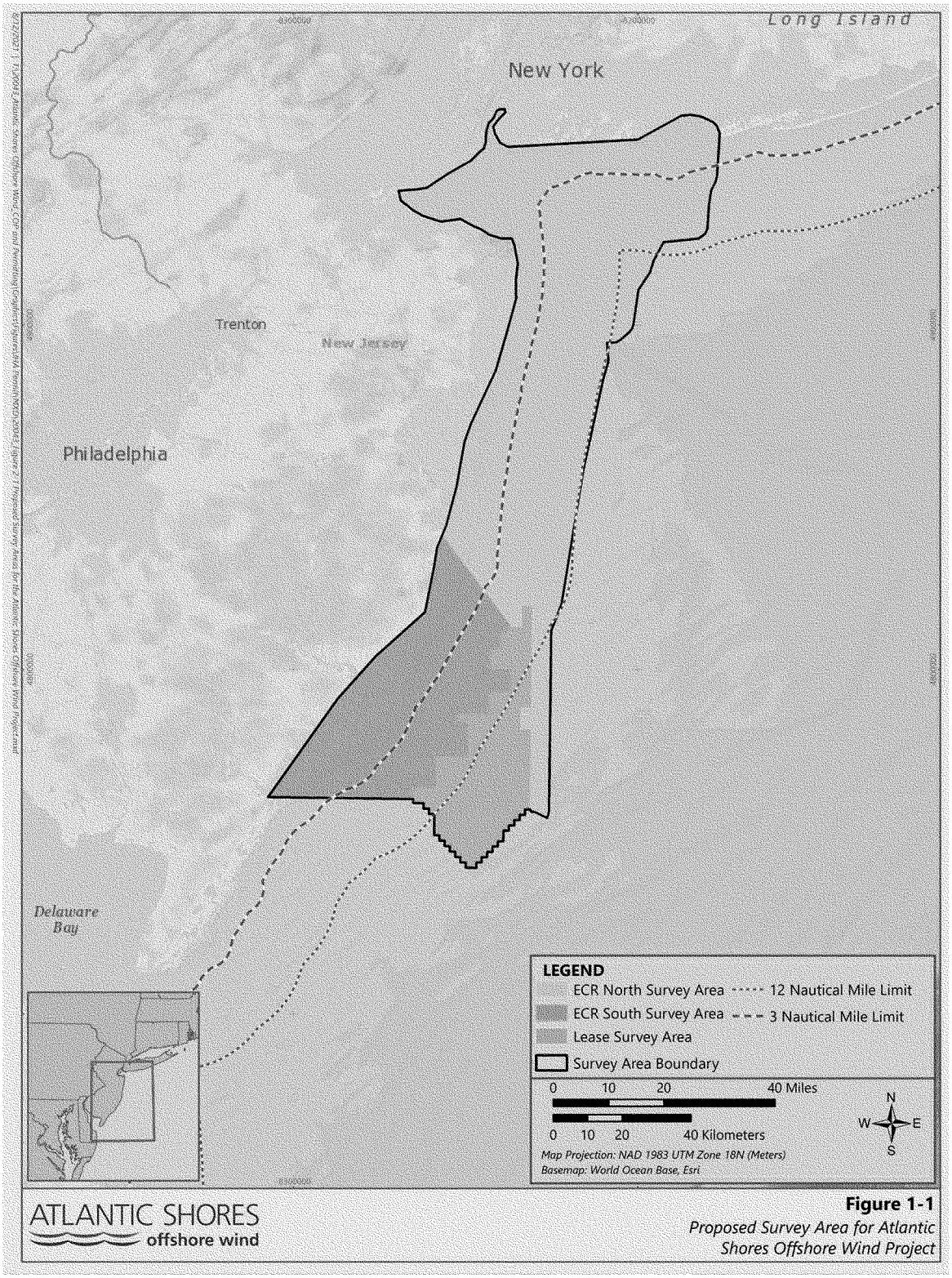

Figure 1-- Map of the Three Sites (Lease Area and Export Cable Routes North and South) that Atlantic Shores Proposes to Perform Site Characterization Surveys (HRG).

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Detailed Description of Specific Activity

Atlantic Shores' proposed marine site characterization surveys include HRG and geotechnical survey activities. These survey activities would occur within the both the Lease Area and within ECRs between the Lease Area and the coasts of New York and New Jersey. The Lease Area is approximately 5,867.97 km² (1,450,006 acres) and is located approximately 24 nm (44 km) from the coastline (see Figure 1). The proposed survey area is approximately from Long Island, New York to Atlantic City, New Jersey. For the purpose of this proposed IHA, the Lease Area and ECRs are collectively referred to as the survey area.

Atlantic Shores' survey activities are anticipated to be supported by vessels, which will maintain a speed of approximately to 3.5 knots (kn; 6.5 kilometer per hour (km/h)) while transiting survey lines. The proposed HRG and geotechnical survey activities are described below.

Proposed Geotechnical Survey Activities

Atlantic Shores' proposed geotechnical activities would include the drilling of sample boreholes, deep cone penetration tests (CPTs), and shallow CPTs. Such proposed activities have been performed before by Atlantic Shores and considerations of the impacts produced from geotechnical activities have been previously analyzed and included in the proposed 2020 **Federal Register** notice for Atlantic Shores' HRG activities (85 FR 7926; February 12, 2020). The same discussion by NMFS to not analyze the geotechnical activities further that was included in that notification applies to this proposed project. In that notification, NMFS determined that the likelihood of the proposed geotechnical surveys resulting in harassment of marine mammals was to be so low as to be discountable. As this information remains applicable and NMFS' determination has not changed, these activities will not be discussed further in this proposed notification.

Proposed Geophysical Survey Activities

Atlantic Shores has proposed that HRG survey operations would be conducted continuously 24 hours a day. Based on 24-hour operations, the estimated total duration of the proposed activities would be approximately 360 survey days. This includes 120 days of survey activities in the Lease Area, 180 days in ECR North, and 60 days in ECR South (refer back to Table 1). As previously discussed above, this schedule does include potential down time due to inclement weather or other project-related delays.

The HRG survey activities will be supported by vessels of sufficient size to accomplish the survey goals in each of the specified survey areas. It is assumed surveys in each of the identified survey areas will be executed by a single vessel during any given campaign (*i.e.,* no more than one survey vessel would operate in the Lease Area at any given time, but there may be one survey vessel operating in the Lease Area and one vessel operating each of the ECR areas concurrently, *i.e.,* three vessels). HRG equipment will either be mounted to or towed behind the survey vessel at a typical survey speed of approximately 3.5 knot (6.5 km) per hour. The geophysical survey activities proposed by Atlantic Shores would include the following:

- Depth sounding (multibeam depth sounder and single beam echosounder) to determine water depths and general bottom topography (currently estimated to range from approximately 16-feet (ft; 5-m to 131-ft (40-m) in depth);
- Magnetic intensity measurements (gradiometer) for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom;
- Seafloor imaging (side scan sonar survey) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features;
- Shallow penetration sub-bottom profiler (pinger/chirp) to map the near surface stratigraphy (top 0-ft to 16-ft (0-m to 5-m) soils below seabed); and,
- Medium penetration sub-bottom profiler (chirps/parametric profilers/sparkers) to map deeper subsurface stratigraphy as needed (soils down to 246-ft (75-m) to 328-ft (100-m) below seabed).

Table 2 identifies the representative survey equipment that may be used in support of planned geophysical survey activities. The make and model of the listed geophysical equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives. All categories of representative HRG survey equipment shown in Table 2 work with operating frequencies <180 kHz.

TABLE 2—SUMMARY OF REPRESENTATIVE EQUIPMENT SPECIFICATIONS WITH OPERATING FREQUENCIES BELOW 180 kHz

HRG survey equipment (sub-bottom profiler)	Representative equipment type	Operating frequency ranges (kHz)	Operational source level ranges (dB_{RMS}) [b]	Beamwidth ranges (degrees)	Typical pulse durations RMS (millisecond)	Pulse repetition rate (Hz)
Sparker (impulsive)	Applied Acoustics Dura-Spark 240 [a]	0.01 to 1.9	203	180	3.4	2
	Geo Marine Geo-Source	0.2 to 5	195	180	7.2	0.41
CHIRPs (non-impulsive)	Edgetech 2000–DSS	2 to 16	195	24	6.3	10
	Edgetech 216	2 to 16	179	17, 20, or 24	10	10
	Edgetech 424	4 to 24	180	71	4	2
	Edgetech 512i	0.7 to 12	179	80	9	8
	Pangeosubsea Sub-Bottom Imager™	4 to 12.5	190	120	4.5	44

Note: Two sources proposed for use by Atlantic Shores (*i.e.,* the INNOMAR SES–2000 Medium-100 Parametric and the INNOMAR deep-36 Parametric) are not expected to result in take due to their higher frequencies and extremely narrow beamwidths. Because of this, these sources were not considered when calculating the Level B harassment isopleths and are not discussed further in this notification. Acoustic parameters on these parametric sub-bottom profilers can be found in Atlantic Shores' IHA application on NMFS' website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*).

[a] Atlantic Shores discussed with NMFS and include information in their application that while the Applied Acoustics Dura-Spark 240 is planned to be used during project activities, the equipment specifications and subsequent analysis are based on the SIG ELC 820 with a power level of 750 joules (J) at a 5-meter depth (Crocker and Fratantonio (2016)). However, Atlantic Shores expects a more reasonable power level to be 500–600 J based on prior experience with HRG surveys; 750 J was used as a worst-case scenario to conservatively account for take of marine mammals as these higher electrical outputs would only be used in areas with denser substrates (700–800 J).

[b] Root mean square (RMS) = 1 microPa.

Atlantic Shores has indicated to NMFS that the expected energy levels of the Applied Acoustics Dura-Spark would range between 500–600 joules (J) in most cases. However, in their IHA application, Atlantic Shores includes a discussion that, based on their previous experiences and survey efforts using the Applied Acoustics Dura-Spark, Atlantic Shores do not expect the electrical output to exceed 700–800 J, except in situations where denser substrates are present.

The deployment of HRG survey equipment, including the equipment planned for use during Atlantic Shores' proposed activities produces sound in the marine environment that has the potential to result in harassment of marine mammals. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species).*

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's draft 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment (SARs). All values presented in Table 3 are the most recent available at the time of publication and are available in the draft 2021 SARs available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE SURVEY AREA THAT MAY BE AFFECTED BY ATLANTIC SHORES' PROPOSED HRG ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic Stock	E/D, Y	368 (0; 364; 2019)	0.7	7.7
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic Stock	E/D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia Stock	E/D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata.*	Canadian East Coastal Stock	-/-, N	21,968 (0.31; 17,002; 2016)	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Sperm whale	*Physeter macrocephalus*	North Atlantic Stock	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic Stock	-/-, N	39,215 (0.3; 30,627; 2016)	306	29
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic Stock	-/-, N	93,233 (0.71; 54,443; 2016)	544	227
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Northern Migratory Coastal Stock.	-/D, Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
		Western North Atlantic Offshore Stock.	-/-, N	62,851 (0.23; 51,914; 2016)	519	28
Common dolphin	*Delphinus delphis*	Western North Atlantic Stock	-/-, N	172,974 (0.21, 145,216, 2016)	1,452	390
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic Stock	-/-, N	39,921 (0.27; 32,032; 2016)	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic Stock	-/-, N	35,215 (0.19; 30,051; 2016)	301	34
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy Stock.	-/-, N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Superfamily Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic Stock	-/-, N	61,336 (0.08; 57,637; 2018)	1,729	339
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic Stock	-/-, N	27,300 (0.22; 22,785; 2016)	1,389	4,453

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual mortality and serious injury (M/SI) value given is for the total stock.

As indicated above, all 15 species (with 16 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. Four marine mammal species that are listed under the ESA may be present in the survey area and are included in the take request: The North Atlantic right, fin, sei, and sperm whale.

The temporal and/or spatial occurrence of several cetacean and pinniped species listed in Table 3–1 of Atlantic Shores' 2022 IHA application is such that take of these species is not expected to occur either because they have very low densities in the survey area or are known to occur further offshore than the survey area. These include: The blue whale (*Balaenoptera musculus*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whale (*Mesoplodon spp.*), dwarf and pygmy sperm whale (*Kogia sima and Kogia breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), northern bottlenose whale (*Hyperoodon ampullatus*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), hooded seal (*Cystophora cristata*), and harp seal (*Pagophilus groenlandicus*). As harassment and subsequent take of these species is not anticipated as a result of the proposed activities, these species are not analyzed or discussed further.

In addition, the Florida manatees (*Trichechus manatus;* a sub-species of the West Indian manatee) has been previously documented as an occasional visitor the Northeast region during summer months (U.S. Fish and Wildlife Service (USFWS) 2019). However, manatees are managed by the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this document.

For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters and is also a generic stock for management purposes. For humpback whales, NMFS defines stocks on the basis of feeding locations, *i.e.,* Gulf of Maine. However, references to humpback whales in this document refer to any individuals of the species that are found in the specific geographic region. Additional information on these animals can be found in Sections 3 and 4 of Atlantic Shores' IHA application, the draft 2021 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and NMFS' website.

Below is a description of the species that have the highest likelihood of occurring in the survey area and are thus expected to potentially be taken by the proposed activities as well as further detail informing the baseline for select species (*i.e.,* information regarding current Unusual Mortality Events (UMEs) and important habitat areas).

North Atlantic Right Whale

The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). Surveys have demonstrated the existence of seven areas where North Atlantic right whales congregate seasonally, including north and east of the proposed survey area in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.,* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). However, given that Atlantic Shores' surveys would be concentrated offshore New Jersey, any right whales in the vicinity of the survey areas are expected to be transient, most likely migrating through the area.

The western North Atlantic population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.,* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.,* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.,* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*) (Pace *et al.,* 2017), which are increasing in abundance (NMFS, 2015). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Eighteen right whale calves were documented in 2021. As of December 8, 2021 and the writing of this proposed Notification, two North Atlantic right whale calves have documented to have been born during this calving season. Presently, the best available population estimate for North Atlantic right whales is 386 per the draft 2021 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

The proposed survey area is part of a migratory corridor Biologically Important Area (BIA) for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break. This important migratory area is approximately 269,488 km^2 in size (compared with the approximately 5,605.2 km^2 of total estimated Level B harassment ensonified area associated with the 360 planned survey days) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. A portion of one SMA, which occurs off the mouth of Delaware Bay, overlaps spatially with a section of the proposed survey area. The SMA, which occurs off the mouth of Delaware Bay, is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 kn) for all vessels greater than 65 ft. A portion of one SMA overlaps spatially with the northern section of the proposed survey area. All

Atlantic Shores survey vessels, regardless of length, would be required to adhere to a 10 knot vessel speed restriction when operating within this SMA. In addition, all Atlantic Shores survey vessels, regardless of length, would be required to adhere to a 10 knot vessel speed restriction when operating in any Dynamic Management Area (DMA) declared by NMFS.

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 15 of the mortalities thus far. As of October 13, 2021, a total of 34 confirmed dead stranded whales (21 in Canada; 13 in the United States) have been documented. The cumulative total number of animals in the North Atlantic right whale UME has been updated to 49 individuals to include both the confirmed mortalities (dead stranded or floaters) (n=34) and seriously injured free-swimming whales (n=15) to better reflect the confirmed number of whales likely removed from the population during the UME and more accurately reflect the population impacts. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-north-atlantic-right-whale-unusual-mortality-event.* Furthermore, we continue to evaluate our North Atlantic right whale vessel strike reduction programs, both regulatory and non-regulatory. NMFS anticipates releasing a proposed rule modifying the right whale speed regulations in Spring 2022 to further address the risk of mortality and serious injury from vessel collisions in U.S. waters.

During the development of this proposed notification, several Slow Zones were implemented off New Jersey and New York that are worth mentioning. On November 11, 2021, December 11, 2021, and December 20, 2021, the Woods Hole Oceanographic Institution's Ocean City buoy detected the presence of right whales east of Ocean City, Maryland. In response, NMFS implemented two right whale Slow Zones for the area with expiration dates of November 26, 2021, December 26, 2021, and January 4, 2022, respectively. Additionally, as of November 8, 2021, NMFS extended a voluntary right whale Slow Zone (via acoustic trigger) located south of Nantucket, Massachusetts. This is due to expire on November 19, 2021. Four other voluntary right whale Slow Zones were announced by NMFS on November 20, 2021, November 30, 2021, December 13, 2021, and December 21, 2021, via an acoustic trigger of a right whale detected off New York City, New York. These, at the time of the development of this notification, expired after December 5, 2021, December 14, 2021, December 26, 2021, and January 5, 2022, respectively. Lastly, four more Slow Zones were implemented on November 30, 2021, December 2, 2021, December 13, 2021, and December 20, 2021 after the acoustic detection of right whales southeast of Atlantic City, New Jersey. These zones were active through December 8, 2021, December 17, 2021, December 26, 2021, and January 4, 2022, respectively. More information on these right whale Slow Zones can be found on NMFS' website (*https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*).

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area, although are not necessarily from the Gulf of Maine feeding population managed as a stock by NMFS. Barco *et al.,* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.,* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.,* 2007a; Waring *et al.,* 2007b). A key question with regard to humpback whales off the mid-Atlantic states is their stock identity. Using fluke photographs of living and dead whales observed in the region, Barco *et al.,* (2002) reported that 43 percent of 21 live whales matched to the Gulf of Maine, 19 percent to Newfoundland, and 4.8 percent to the Gulf of St Lawrence, while 31.6 percent of 19 dead humpbacks were known Gulf of Maine whales. Although Gulf of Maine whales apparently dominate the population composition of the mid-Atlantic, lack of photographic effort in Newfoundland makes it likely that the observed match rates under-represent the true presence of Canadian whales in the region (Waring *et al.,* 2016). Barco *et al.,* (2002) suggested that the mid-Atlantic region primarily represents a supplemental winter-feeding ground used by humpbacks. Recent research by King *et al.,* (2021) has demonstrated a high occurrence and use (foraging) of the New York Bight area by humpback whales than previously known. Furthermore, King *et al.,* (2021) highlights important concerns for humpback whales found specifically in the nearshore environment (<10 km from shore) from various anthropogenic impacts.

Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 154 known cases (as of October 13, 2021). Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2021-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2016). Fin whales are present north of 35-degree latitude in every season and

are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). Sei whales occur in shallower waters to feed. Sei whales are listed as engendered under the ESA, and the Nova Scotia stock is considered strategic and depleted under the MMPA. The main threats to this stock are interactions with fisheries and vessel collisions.

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45 °W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100-m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Waring *et al.,* 2016).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 118 strandings (as of October 13, 2021). This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2021-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras.

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). Long-finned pilot whales are not listed under the ESA. The Western North Atlantic stock is considered strategic under the MMPA.

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities.

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200-m isobaths (Waring *et al.,* 2014).

Common Dolphin

The short-beaked common dolphin is found worldwide in temperate to subtropical seas. In the North Atlantic, short-beaked common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016).

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore forms (Waring *et al.,* 2016). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. The coastal morphotype is morphologically and genetically distinct from the larger, more robust morphotype that occupies habitats further offshore. Spatial distribution data, tag-telemetry studies, photo-ID studies and genetic studies demonstrate the existence of a distinct Northern Migratory stock of coastal bottlenose dolphins (Waring *et al.,* 2014). During summer months (July–August), this stock occupies coastal waters from the shoreline to approximately the 25-m isobath between the Chesapeake Bay mouth and Long Island, New York; during winter months (January–March), the stock occupies coastal waters from Cape Lookout, North Carolina, to the

North Carolina/Virginia border (Waring *et al.,* 2014). The Western North Atlantic northern migratory coastal stock and the Western North Atlantic offshore stock may be encountered by the proposed survey.

Harbor Porpoise

In the Lease Area, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150-m deep (Waring *et al.,* 2016). They are seen from the coastline to deep waters (>1,800-m; Westgate *et al.,* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

Pinninpeds (Harbor Seal and Gray Seal)

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30°N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Haul-out and pupping sites are located off Manomet, MA and the Isles of Shoals, ME, but generally do not occur in areas in southern New England (Waring *et al.,* 2016).

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals in the survey area belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2016).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. A total of 3,152 reported strandings (of all species) had occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Presently, this UME is non-active and is pending closure by NMFS as of March 2020. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, *cephalorhynchid, Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.,* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of

available information. Fifteen marine mammal species (13 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer back to Table 3. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seven are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent and related **Federal Register** notifications, including for survey activities using similar HRG methodologies, over similar amounts of time, and occurring within the same specified geographical region (*e.g.,* 82 FR 20563, May 3, 2017; 85 FR 36537, June 17, 2020; 85 FR 7926, February 12, 2020; 85 FR 37848, June 24, 2020; 85 FR 48179, August 10, 2020; 86 FR 16327, March 29, 2021; 86 FR 17782, April 6, 2021). No significant new information is available, and we refer the reader to these documents rather than repeating the details here.

The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by Atlantic Shores' activities. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Background on Active Acoustic Sound Sources and Acoustic Terminology

This subsection contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to the summary of the potential effects of the specified activity on marine mammals. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.,* (1995); Urick (1983).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude. Therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1-m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy in a stated frequency band over a stated time interval or event and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be directed either in a beam or in beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given

location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Sparkers produce pulsed signals with energy in the frequency ranges specified in Table 2. The amplitude of the acoustic wave emitted from sparker sources is equal in all directions (*i.e.,* omnidirectional), while other sources planned for use during the proposed surveys have some degree of directionality to the beam, as specified in Table 2. Other sources planned for use during the proposed survey activity (*e.g.,* CHIRPs) should be considered non-pulsed, intermittent sources.

Summary on Specific Potential Effects of Acoustic Sound Sources

Underwater sound from active acoustic sources can include one or more of the following: Temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

Animals in the vicinity of Atlantic Shores' proposed HRG survey activity are unlikely to incur even TTS due to the characteristics of the sound sources, which include relatively low source levels (179 to 245 dB re 1 μPa m), and generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS, as it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and that the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.,* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of many of HRG survey devices planned for use (Table 2) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies

and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for most HRG survey equipment types planned for use (Table 2) and the brief period when an individual mammal is likely to be exposed.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses. In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare. An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg 1987; Rivier 1995), reduced immune competence (Blecha 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been long been equated with stress. The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. In general, there are few data on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is currently no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and geotechnical survey activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are generally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots. At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of Atlantic Shores' specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects, or significant impacts to marine mammal habitat, including prey, are expected.

Marine Mammal Habitat

The HRG survey equipment will not contact the seafloor and does not represent a source of pollution. We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. Any avoidance of the area on the part of marine mammal prey would be expected to be short term and temporary.

Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Impacts on marine mammal habitat from the proposed activities will be temporary, insignificant, and discountable.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use and the proposed mitigation measures, Level A harassment is neither anticipated, nor proposed to be authorized. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and is not proposed for authorization. Implementation of required mitigation further reduces this potential. Furthermore and as previously described, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for the impulsive sources (*i.e.,* sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRPs) evaluated here for Atlantic Shores' proposed activity.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). These thresholds are provided in the table below (Table 5). The references, analysis, and methodology used in the development of the thresholds are described in NMFS (2018) Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, ANSI defines peak sound pressure as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

The 2020 proposed notification for Atlantic Shores' HRG surveys (85 FR 7926; February 12, 2020) previously analyzed the potential for Level A harassment (refer to Table 5 in that notification and additional discussion therein).

Similar to the past IHAs issued to Atlantic Shores, the proposed activities for 2022 include the use of impulsive (*i.e.,*) and non-impulsive (*e.g.,* CHIRPs) sources. Carrying through the same logic as the locations, species, survey durations, equipment used, and source levels are all of a similar scope previously analyzed for Atlantic Shores' surveys, and as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here due to the mitigation measures Atlantic Shores has proposed, and the potential for Level A harassment is not evaluated further in this document. Atlantic Shores did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 2).

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 2 shows the HRG equipment types that may be used during the proposed surveys and the source levels associated with those HRG equipment types. The computations and results from the Level B ensonified area analysis are displayed in Tables 6 and 7 below.

TABLE 6—INPUTS INTO THE LEVEL B HARASSMENT SPREADSHEET FOR HIGH RESOLUTION GEOPHYSICAL SOURCES USING A TRANSMISSION LOSS COEFFICIENT OF 20

Source name	Input values in spreadsheet					Computed values (meters)	
	Threshold level	Source level (dBrms)	Frequency (kH)	Beamwidth (degrees)	Water depth (m)	Slant distance of threshold	Horizontal threshold range (m)
SIG ELC 820 Sparker at 750J*	160	203	0.01	180	5	141	141
Geo Marine Survey System 2D SUHRS at 400J	160	195	0.2	180	5	56	56
Edgetech 2000–DSS	160	195	2	24	5	56	1
Edgetech 216	160	179	2	24	5	9	1
Edgetech 424	160	180	4	71	10	10	6
Edgetech 512i	160	179	0.7	80	10	9	6
Pangeosubsea Sub-Bottom Imager™	160	190	4	120	5	32	9

*Used as a proxy for the Applied Acoustics Dura-Spark 240 because the specific energy setting is not described in Crocker and Franantonio (2016).

TABLE 7—MAXIMUM DISTANCES TO LEVEL B 160 dB_{RMS} THRESHOLD BY EQUIPMENT TYPE OPERATING BELOW 180 kHz

HRG survey equipment (sub-bottom profiler)	Representative equipment type	Distances to level B threshold (m)
Sparker	Applied Acoustics Dura-Spark 240	141
	Geo Marine Survey System 2D SUHRS	56
CHIRP	Edgetech 2000–DSS	56
	Edgetech 216	9
	Edgetech 424	10
	Edgetech 512i	9
	Pangeosubsea Sub-Bottom Imager™	32

Results of modeling using the methodology described and shown above indicated that, of the HRG survey equipment planned for use by Atlantic Shores that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics Dura-Spark 240 would produce the largest Level B harassment isopleth (141-m; please refer

back to Tables 6 and 7 above, as well as Table 6–1 in Atlantic Shores' IHA application). Estimated Level B harassment isopleths associated with the CHIRP equipment planned for use are also found in Tables 6 and 7. All CHIRPs equipment produced Level B harassment isopleths much smaller than the Applied Acoustics Dura-Spark 240 sparker did.

Although Atlantic Shores does not expect to use sparker sources on all planned survey days and during the entire duration that surveys are likely to occur, Atlantic Shores proposes to assume for purposes of analysis that the sparker would be used on all survey days and across all hours. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

Marine Mammal Occurrence

In this section, we provide the information about presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–201 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.,* 2016a; Curtice *et al.,* 2018), represent the best available information regarding marine mammal densities in the survey area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.,* 2016b, 2017, 2018).

The density data presented by Roberts *et al.,* (2016b, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from eight physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016a). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016b, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, density data from Roberts *et al.,* (2016b, 2017, 2018, 2021) were mapped using a geographic information system (GIS). For each of the survey areas (*i.e.,* Lease Area, ECR North, ECR South), the densities of each species as reported by Roberts *et al.* (2016b, 2017, 2018, 2021) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis. Estimated seasonal densities (animals per km^2) of all marine mammal species that may be taken by the proposed survey, for all survey areas are shown in Tables C–1, C–2 and C–3 in Appendix C of Atlantic Shores' IHA application. The maximum seasonal density values used to estimate take numbers are shown in Table 8 below. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2016b, 2017, 2018, 2021) models provide results at the genus or guild level.

For bottlenose dolphin densities, Roberts *et al.,* (2016b, 2017, 2018) does not differentiate by stock. The Western North Atlantic northern migratory coastal stock is generally expected to occur only in coastal waters from the shoreline to approximately the 20-m (65-ft) isobath (Hayes *et al.,* 2018). As the Lease Area is located within depths exceeding 20-m, where the offshore stock would generally be expected to occur, all calculated bottlenose dolphin exposures within the Lease Area were assigned to the offshore stock. However, both stocks have the potential to occur in the ECR North and ECR South survey areas. To account for the potential for mixed stocks within ECR North and South, the survey areas ECR North and South were divided approximately along the 20-m depth isobath, which roughly corresponds to the 10-fathom contour on NOAA navigation charts. As approximately 33 percent of ECR North and ECR South are 20-m or less in depth, 33 percent of the estimated take calculation for bottlenose dolphins was applied to the Western North Atlantic northern migratory coastal stock and the remaining 67 percent was applied to the offshore stock.

For this proposed project, Atlantic Shores has used the same pilot whale densities that were previously used in the 2020 and subsequent 2021 (Renewal) IHAs. To better estimate the number of pilot whales that could potentially be impacted by the proposed project, although exposure is noted as unlikely to occur in the IHA application, Atlantic Shores adjusted the take estimate by average group size.

Because the seasonality, feeding preferences, and habitat use by gray seals often overlaps with that of harbor seals in the survey areas, it was assumed that modeled takes of seals could occur to either of the respective species. Furthermore, as the density models produced by Roberts *et al.* (2016b, 2017, 2018) do not differentiate between the different pinniped species, the same density estimates were applied to both seal species. Because of this, pinniped density values reported in Atlantic Shores' IHA application are described as ''seals'' and not species-specific.

Since Atlantic Shores' 2020 and 2021 (Renewal) IHAs for HRG surveys were completed, the North Atlantic right whale density data has been updated for this proposed project. This is due to the inclusion of three new datasets: 2011–2015 Northeast Large Pelagic Survey Cooperative, 2017–2018 Marine Mammal Surveys of the Wind Energy Areas conducted by the New England Aquarium, and 2017–2018 New York Bight Whale Monitoring Program surveys conducted by the New York State Department of Environmental conservation (NYSDEC). This new density data shows distribution changes that are likely influenced by oceanographic and prey covariates in the whale density model (Roberts *et al.,* 2021).

TABLE 8—MAXIMUM SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 km²) IN THE SURVEY AREAS (APPENDIX C OF ATLANTIC SHORES' IHA APPLICATION)

Species groups	Species	Maximum seasonal densities		
		Lease area	ECR north	ECR south
Cetaceans	North Atlantic right whale	0.499	0.182	0.179
	Humpback whale	0.076	0.082	0.103
	Fin whale	0.100	0.080	0.057
	Sei whale	0.004	0.004	0.002
	Minke whale	0.055	0.017	0.019
	Sperm whale	0.013	0.005	0.003
	Long-finned pilot whale	0.036	0.012	0.009
	Bottlenose dolphin (Western North Atlantic coastal migratory)		21.675	58.524
	Bottlenose dolphin (Western North Atlantic offshore)	21.752	21.675	58.524
	Common dolphin	3.120	1.644	1.114
	Atlantic white-sided dolphin	0.487	0.213	0.152
	Atlantic spotted dolphin	0.076	0.059	0.021
	Risso's dolphin	0.010	0.001	0.002
	Harbor porpoise	2.904	7.357	2.209
Pinnipeds	Gray seal	4.918	9.737	6.539
	Harbor seal	4.918	9.737	6.539

Note—Many of the densities provided in this table have been previously used and applied during the 2020 IHA to Atlantic Shores and its subsequent Renewal and remain applicable.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 141-m distance associated with the Applied Acoustics Dura-Spark 240) to the Level B harassment criterion and the estimated distance traveled per day by a given survey vessel (*i.e.,* 55-km (34.2-mi)) are then used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel.

Atlantic Shores estimates that proposed surveys will achieve a maximum daily track line distance of 55 km per day (24-hour period) during proposed HRG surveys. This distance accounts for the vessel traveling at approximately 3.5 knots and accounts for non-active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 141-m (Table 7) and the maximum estimated daily track line distance of 55 km across all survey sites, an area of 15.57 km² would be ensonified to the Level B harassment threshold per day across all survey sites during Atlantic Shores' proposed surveys (Table 9) based on the following formula:

$$\textit{Mobile Source ZOI} = (\textit{Distance/day} \times 2r) + \pi r^2$$

Where:

Distance/day = the maximum distance a survey vessel could travel in a 24-hour period; and

r = the maximum radial distance from a given sound source to the NOAA Level A or Level B harassment thresholds.

TABLE 9—MAXIMUM HRG SURVEY AREA DISTANCES FOR ATLANTIC SHORES' PROPOSED PROJECT

Survey area	Number of active survey days	Survey distances per day in km (mi)	Maximum radial distance (r) in m (ft)	Calculated ZOI per day (km²)	Total annual ensonified area (km²)
Lease Area	120	55 (34.2)	141 (463)	15.57	1,868.4
ECR North	180				2,802.6
ECR South	60				934.2

As described above, this is a conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold would be operated at all times during the entire survey, which may not ultimately occur.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km²), incorporating the maximum seasonal estimated marine mammal densities as described above. Estimated numbers of each species taken per day across all survey sites are then multiplied by the total number of survey days (*i.e.,* 360). The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula with the resulting proposed take of marine mammals is shown below in Table 10:

$$\textit{Estimated Take} = D \times ZOI \times \#\ \textit{of days}$$

Where:

D = average species density (per km²); and

ZOI = maximum daily ensonified area to relevant thresholds.

TABLE 10—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

Species	Calculated takes by Level B harassment [e]	Takes proposed for Level B harassment to be authorized [f]	Total	
			Proposed takes (Level B Harassment) to be authorized [f]	Proposed takes (Level B Harassment) as a percentage of population/stock [a f]
North Atlantic right whale	17	17	17	4.62
Humpback whale	4	[c] 8	8	0.57
Fin whale	5	5	5	0.07
Sei whale	2	2	2	0.03
Minke whale	2	2	2	0.01
Sperm whale	1	1	1	0.03
Long-finned pilot whale	20	20	20	0.05
Bottlenose dolphin (W.N. Atlantic Coastal Migratory)	385	385	385	5.80
Bottlenose dolphin (W.N. Atlantic Offshore)	1,175	1,175	1,175	1.87
Common dolphin (short-beaked)	406	[b] 560	560	0.32
Atlantic white-sided dolphin	17	17	17	0.02
Atlantic spotted dolphin	50	[d] 100	100	0.25
Risso's dolphin	30	30	30	0.08
Harbor porpoise	282	282	282	0.30
Harbor seal	426	426	426	0.56
Gray seal	426	426	426	1.56

[a] Calculated percentages of population/stock were based on the population estimates (Nest) found in the NMFS's draft 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment on NMFS's website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

[b] Based on information obtained from the monitoring report provided to NMFS after the completion of the 2020 project, as well as information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021), NMFS has proposed to increase the number of authorized takes (by Level B harassment only) for common dolphins.

[c] Based on recent data from King *et al.* (2021) where humpback whales were the most commonly sighted species in the New York Bight, NMFS has proposed to increase the take of humpback whales by assuming that Atlantic Shores' four modeled exposures would be of groups rather than individuals, and therefore multiplied by an average group size of two to yield eight.

[d] Based on information obtained from the monitoring report provided to NMFS after the completion of the 2020 project, as well as information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021), NMFS has proposed to increase the number of authorized takes (by Level B harassment only) for Atlantic spotted dolphins.

[e] These values were proposed by Atlantic Shores.

[f] These values were proposed by NMFS.

The take numbers shown in Table 10 represent those originally calculated and requested by Atlantic Shores with minor modifications by NMFS for humpback whales, common dolphins, and Atlantic spotted dolphins, which are discussed below.

As noted within Atlantic Shores' IHA application and discussed within the Renewal IHA application (see Atlantic Shores Offshore Wind, 2021), there was an adjustment made for Risso's dolphins, common dolphins, and long-finned pilot whales based on typical pod and group sizes, which yielded the values described above in Table 10. NMFS agrees with these approaches, as described in the IHA applications, with exception for three cetacean species described below.

Estimated takes of common dolphins were increased from the density-based estimate based on information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021) and sightings described in the 2020 monitoring report. Based on these previous observations, exposures of common dolphins above the 160-dB harassment threshold were estimated at 1.55 per day. Assuming that this same exposure rate continues for the presently planned activity yields the estimate provided in Table 10.

Based on recent information from King *et al.* (2021) that demonstrated that the humpback whale is commonly sighted along the New York Bight area, NMFS determined that the humpback whale take request may be too low given the occurrence of animals near the survey area. Because of this, NMFS proposes to double the requested take to account for underestimates to the actual occurrence of this species within the density data.

Previously, 100 takes of Atlantic spotted dolphins, by Level B harassment, were authorized to Atlantic Shores during their 2020 IHA. Based on a lack of sightings in the 2020 field season per the submitted monitoring report, Atlantic Shores had requested and been authorized half of these takes (50 Level B harassment) during their 2021 field season for their Renewal IHA. However, based on information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021) as the monitoring report for the 2021 field season is not yet available, NMFS has proposed to increase the take previously requested by Atlantic Shores from 50 to 100 to account for the numerous sightings of Atlantic spotted dolphins that had already occurred early into Atlantic Shores' 2021 field season (17 takes out of 50 authorized for the Renewal IHA).

As described above, Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. The take calculation methodology as described above resulted in an estimate of 852 total seal takes for both species. Based on this estimate, Atlantic Shores has requested 852 takes total for pinnipeds (426 each species), based on the use of the same density for both species as they are known to overlap in habitat use, foraging, and spatial scale. Furthermore, as the density estimates were not split by species in Roberts *et al.* (2016b, 2017, 2018) this approach assumes that the likelihood of either species occurring during the survey is equal. We think

this is a reasonable approach and therefore propose to authorize the requested amount of take, as shown in Table 10.

Worth noting is the proposed authorized take of North Atlantic right whales, which stems from an increase in the density of North Atlantic right whales at the survey site. Atlantic Shores used information from Roberts *et al.,* (2020) that demonstrated that the density of North Atlantic right whales has increased by approximately 40 percent in some portions of the survey area compared to the 2020 IHA (see Table 11), which justifies the total proposed take number presented above in Table 10. While past monitoring reports (see the 2020 report on NMFS' website) have reported no observations of North Atlantic right whales during the 2020 surveys, NMFS agrees with the approach taken by Atlantic Shores as using the best available science to be conservative and proposes to authorize 17 takes by Level B harassment only of North Atlantic right whales during the proposed project.

TABLE 11—CHANGES IN NORTH ATLANTIC RIGHT WHALE DENSITIES IN THE PROJECT SITE FROM THE 2020 IHA TO THIS PROPOSED 2022 IHA PER DATA FROM ROBERTS ET AL., (2020)

	Winter		Spring		Summer		Fall	
	2020 IHA	2022 IHA	2020 IHA	2022 IHA	2020 IHA	2022 IHA	2020 IHA	2022 IHA
Lease Area	0.087	0.499	0.060	0.426	0.008	0.002	0.006	0.009
Northern ECR	0.068	0.182	0.056	0.149	0.008	0.001	0.006	0.011
Southern ECR	0.073	0.179	0.055	0.097	0.007	0.000	0.006	0.005

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Proposed Mitigation Measures

NMFS proposes the following proposed mitigation measures be implemented during Atlantic Shores' proposed marine site characterization surveys, in compliance with the proposed IHA and with the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation (specifically Project Design Criteria (PDC) 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Exclusion Zones and Level B Harassment Zones

Marine mammal Exclusion Zones would be established around the HRG survey equipment and monitored by protected species observers (PSOs). These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: Sparkers; non-impulsive: Non-parametric sub-bottom profilers), a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours. These PSO will monitor Exclusion Zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The Exclusion Zone distances are as follows:

- A 500-m Exclusion Zone for North Atlantic right whales during use of specified acoustic sources (impulsive: Sparkers; non-impulsive: Non-parametric sub-bottom profilers).
- A 100-m Exclusion Zone for all other marine mammals (excluding NARWs) during use of specified acoustic sources (except as specified below). All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal were detected approaching or entering the Exclusion Zones during the HRG survey, the vessel operator would adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Ramp-Up of Survey Equipment and Pre-Clearance of the Exclusion Zones

When technically feasible, a ramp-up procedure would be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up would begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The ramp-up procedure would be used in order to provide additional protection to marine

mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power would then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective Exclusion Zone. Ramp-up will continue if the animal has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Atlantic Shores would implement a 30 minute pre-clearance period of the Exclusion Zones prior to the initiation of ramp-up of HRG equipment. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up. This would allow the PSOs to monitor the Exclusion Zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Atlantic Shores must receive confirmation from the PSO that the Exclusion Zone is clear prior to proceeding. During this 30 minute pre-start clearance period, the entire applicable Exclusion Zones must be visible. The exception to this would be in situations where ramp-up may occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

During this period, the Exclusion Zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective Exclusion Zone. If a marine mammal is observed within an Exclusion Zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and pinnipeds and 30 minutes for all other species). If a marine mammal enters the Exclusion Zone during ramp-up, ramp-up activities must cease and the source must be shut down. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

The pre-clearance zones would be:

- 500-m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100-m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the 30 minute clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the 30 minute clock that was paused may resume. The pre-clearance clock will reset to 30 minutes if the animal dives or visual contact is otherwise lost.

If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable Exclusion Zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.,* during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment (Table 7) would be required if a marine mammal is sighted entering or within its respective Exclusion Zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable Exclusion Zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delpinidae: Delphinus, Lagenorhynchus, Stenella, or Tursiops*) and pinnipeds if they are visually detected within the applicable Exclusion Zones. If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the applicable Level B harassment zone, shutdown would occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.,* such as whether the observed marine mammal belongs to *Delphinus, Lagenorhynchus, Stenella, or Tursiops* for which shutdown is waived, PSOs must use their best professional judgement in making the decision to call for a shutdown.

Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required.

Upon implementation of a shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable Exclusion Zone or following a clearance period of 15 minutes for harbor porpoises and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.,* CHIRPs). Pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers.

Seasonal Operating Requirements

As described above, the section of the proposed survey area partially overlaps with a portion of a North Atlantic right whale SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. All survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. Members of the monitoring team would also monitor the NMFS North Atlantic right whale reporting systems for the establishment of Dynamic Management Areas (DMA). NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Atlantic Shores should be aware of this possibility and

remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 12).

TABLE 12—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area	North Atlantic right whale (*Eubalaena glacialis*).	If established by NMFS, all of Atlantic Shores' vessels will abide by the described restrictions		N/A.
ECR North				November 1 through July 31 (Raritan Bay).
ECR South				N/A.

More information on Ship Strike Reduction for the North Atlantic right whale can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*.

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The proposed survey would occur in an area that has been identified as a biologically important area for migration for North Atlantic right whales. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat nor to negatively impact the migration of North Atlantic right whales, thus mitigation to address the proposed survey's occurrence in North Atlantic right whale migratory habitat is not warranted.

Vessel Strike Avoidance

Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Survey vessel crewmembers responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Atlantic Shores will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down, stop their vessels, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of additional submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena, and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals. All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes, including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- All vessels must reduce their speed to 10-knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- All vessels must maintain a minimum separation distance of 500-m (1,640-ft) from right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-knots or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.
- All vessels must maintain a minimum separation distance of 100-m (328-ft) from non-ESA-listed baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50-m (164-ft) from all other marine mammals, with an understanding that, at times, this may not be possible (*e.g.,* for animals that approach the vessel, bow-riding species).
- When marine mammal are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and Whale Alert, daily and as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA.

Training

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided upon request. Further information can be found at *www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers.* In the event where third-party PSOs are not required, crew members serving as lookouts must receive training on protected species identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements.

Atlantic Shores shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel (*e.g.,* PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard all project vessels for identification of listed species. The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard all project vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of Atlantic Shores' proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical to both compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

Atlantic Shores must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammal and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, would coordinate duty schedules and roles for the PSO team, and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver

shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammal by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Atlantic Shores must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 × 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-part PSO provider, or the operator, but Atlantic Shores is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including Exclusion Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Exclusion Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

Atlantic Shores plans to utilize six PSOs across each vessel to account for shift changes, with a total of 18 during this project (six PSOs per vessel x three vessels). At a minimum, during all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Exclusion Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Atlantic Shores shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in ESRI

shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Potlock@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel and other vessels associated with survey), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. The lease number;
4. PSO names and affiliations;
5. Date and participants of PSO briefings;
6. Visual monitoring equipment used;
7. PSO location on vessel and height of observation location above water surface;
8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval
11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
12. Water depth (if obtainable from data collection software);
13. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
14. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
15. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

Upon visual observation of any marine mammal, the following information must be recorded:

1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
2. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
3. PSO who sighted the animal;
4. Time of sighting;
5. Initial detection method;
6. Sightings cue;
7. Vessel location at time of sighting (decimal degrees);
8. Direction of vessel's travel (compass direction);
9. Speed of the vessel(s) from which the observation was made;
10. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;
11. Species reliability (an indicator of confidence in identification);
12. Estimated distance to the animal and method of estimating distance;
13. Estimated number of animals (high/low/best);
14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
15. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
16. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);
17. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, etc.) and time and location of the action;
18. Equipment operating during sighting;
19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and
20. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any project vessels, during surveys or during vessel transit, Atlantic Shores must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866–755–6622) within two hours of occurrence, when practicable, or no later than 24 hours after occurrence. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that Atlantic Shores personnel discover an injured or dead marine mammal, regardless of the cause of injury or death. In the event that personnel involved in the survey activities discover an injured or dead marine mammal, Atlantic Shores must report the incident to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
2. Species identification (if known) or description of the animal(s) involved;
3. Condition of the animal(s) (including carcass condition if the animal is dead);
4. Observed behaviors of the animal(s), if alive;
5. If available, photographs or video footage of the animal(s); and
6. General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Atlantic Shores must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;
2. Species identification (if known) or description of the animal(s) involved;

3. Vessel's speed during and leading up to the incident;
4. Vessel's course/heading and what operations were being conducted (if applicable);
5. Status of all sound sources in use;
6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
8. Estimated size and length of animal that was struck;
9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;
10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
12. To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 4, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects section, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required shutdown zones for certain activities.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity in estimating take numbers proposed for authorization and evaluated here, in reality, the Applied Acoustics Dura-Spark 240 would likely not be used across the entire 24-hour period and across all 360 days. As noted in Table 7, the other acoustic sources Atlantic Shores has included in their application produce Level B harassment zones below 60-m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area and there are no feeding areas known to be biologically important to marine mammals within the proposed survey area. There is no designated critical habitat for any ESA-listed marine mammals in the proposed survey area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the proposed survey area overlaps a migratory corridor BIA for North Atlantic right whales. Due to the fact that the proposed survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the proposed survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Atlantic Shores' proposed activities. The 500-m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141-m, and thereby minimizes the potential for behavioral harassment of this species.

As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types proposed for use. The proposed authorizations for Level B harassment takes of North Atlantic right

whale are not expected to exacerbate or compound upon the ongoing UME. The limited North Atlantic right whale Level B harassment takes proposed for authorization are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. Further, given the relatively small size of the ensonified area during Atlantic Shores' proposed activities, it is unlikely that North Atlantic right whale prey availability would be adversely affected. Accordingly, NMFS does not anticipate North Atlantic right whales takes that would result from Atlantic Shores' proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of Atlantic Shores' proposed survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus, although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (350) is well below PBR (2,006) (Hayes *et al.,* 2020). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2020).

The required mitigation measures are expected to reduce the number and/or severity of proposed takes for all species listed in Table 4, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. As discussed previously, take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and is not proposed for authorization. Implementation of required mitigation would further reduce this potential. Therefore, NMFS is not proposing any Level A harassment for authorization.

NMFS expects that takes would be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

Biologically Important Areas for Other Species

As previously discussed, impacts from the proposed project are expected to be localized to the specific area of activity and only during periods of time where Atlantic Shores' acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect this proposed action to affect these areas. This is due to the combination of the mitigation and monitoring measures being required of Atlantic Shores as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, not expected to be impacted by Atlantic Shores' proposed survey activities.

Three major haul-out sites exist for harbor seals within ECR North along New Jersey, including at Great Bay, Sand Hook, and Barnegat Inlet (CWFNJ, 2015). As hauled out seals would be out of the water, no in-water effects are expected.

Preliminary Determinations

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed to be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed for authorization;
- Foraging success is not likely to be impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for North Atlantic right whales, the activities would occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration; and
- The proposed mitigation measures, including effective visual monitoring, and shutdowns are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take (by Level B harassment only) of 15 marine mammal species (with 16 managed stocks). The total amount of takes proposed for authorization relative to the best available population abundance is less than 6 percent for all stocks (Table 9). Therefore, NMFS preliminarily finds that small numbers of marine mammals may be taken relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS OPR is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). NMFS GARFO concurred with this determination.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Atlantic Shores authorizing take, by Level B harassment incidental to conducting marine site characterization surveys off of New Jersey and New York from April 20, 2022 through April 19, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed site characterization surveys. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this proposed IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notification to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Description of Proposed Activities section of this notification is planned or (2) the activities as described in the Description of Proposed Activities section of this notification would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notification, provided all of the following conditions are met:

- A request for Renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for Renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: January 21, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–01557 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB749]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council's (Council) Scallop Plan Team will meet February 16, 2022.

DATES: The meeting will be held on Wednesday, February 16, 2022, from 9 a.m. to 5 p.m., Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/2755.*

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sarah Rheinsmith, Council staff; phone: (907) 271–2809; email: *sarah.rheinsmith@noaa.gov.* For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, February 16, 2022

The Council's Scallop Plan Team will update the status of the Alaska weathervane scallop stocks and the Stock Assessment and Fishery Evaluation (SAFE) report, including OFL/ABC recommendations for the 2022 fishing year. Additionally, there will be discussion of 2021 survey results, stock assessment development, EFH updates, survey plans for 2022, a review of research priorities, and other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/2755* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/2755.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/2755.*

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

Dated: January 24, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–01657 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB740]

Marine Mammals; File No. 26285

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that The Whale Museum, P.O. Box 924, Friday Harbor, Washington 98250 (Jenny Atkinson, Responsible Party) has applied in due form for a permit to conduct research or enhancement on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before February 28, 2022.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 26285 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 26285 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. or Courtney Smith, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to conduct research for the Soundwatch Boater Education Program in the in-land waters of Washington State to evaluate vessel regulations and guidelines, characterize vessel trends, and prevent vessel disturbances to marine mammals. The primary target species are Southern Resident and transient killer whales (*Orcinus orca*), but additional species taken during research may include fin (*Balaenoptera physalus*), gray (*Eschrichtius robustus*), humpback (*Megaptera novaeangliae*), and minke (*B. acutorostrata*) whales; Dall's (*Phocoenoides dalli*) and harbor (*Phocoena phocoena*) porpoises. Up to 50 whales of each killer whale stock and 20 individuals of each of the other cetacean species may be taken annually during vessel surveys including photography, photo-identification, video recording, and behavioral observations. Five species of non-listed pinnipeds may be unintentionally harassed during research activities. See the application for complete numbers of animals requested by species. The permit is requested for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 24, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–01600 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposal To Find That Louisiana Has Satisfied All Conditions of Approval Placed on Its Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and U.S. Environmental Protection Agency.

ACTION: Notice of proposed finding; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) (hereafter, ''the agencies'') invite public comment on the agencies' proposed finding that Louisiana has satisfied all conditions the agencies established as part of their 1998 approval of the State's coastal nonpoint pollution control program (coastal nonpoint program). The Coastal Zone Act Reauthorization Amendments (CZARA) direct states and territories with coastal zone management programs previously approved under Section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs, which must be submitted to the Federal agencies for approval. Prior to making such a finding, NOAA and the EPA invite public input on the Federal agencies' rationale for this proposed finding.

DATES: Individuals or organizations wishing to submit comments on the proposed findings document should do so by February 28, 2022.

ADDRESSES: Comments may be submitted by:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov,* enter NOAA–NOS–2020–0100 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Joelle Gore, Chief, Stewardship Division (N/OCM6), Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910; phone (240) 533–0813; ATTN: Louisiana Coastal Nonpoint Program.

Instructions: 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 personally identifiable information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA and EPA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The agencies 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 FURTHER INFORMATION CONTACT: Copies of the proposed findings document may be found on *www.regulations.gov* (search NOAA–NOS–2020–0100) and NOAA's Coastal Nonpoint Pollution Control Program website at *https://coast.noaa.gov/czm/pollutioncontrol/.* Additional background information on the State's program may be obtained upon request from: Allison Castellan, Stewardship Division (N/OCM6), Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (240) 533–0799, email: *allison.castellan@noaa.gov;* or Patty Taylor, U.S. EPA Region 6, EPA Region 6 Main Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, phone: (214) 665–6403, email: *taylor.patricia-a@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 6217(a) of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. Section 1455b(a), requires that each state (or territory) with a coastal zone management program previously approved under Section 306 of the Coastal Zone Management Act must prepare and submit to the agencies a coastal nonpoint pollution control program for approval. Because Louisiana administers a federally approved coastal zone management program, Louisiana submitted its program updates to the agencies for approval in 1997. The agencies provided public notice of and invited public comment on their proposal to approve, subject to specific conditions, the Louisiana program (62 FR 38520). The agencies approved the program by letter dated June 30, 1998, subject to the conditions specified at that time (63 FR 37094). The agencies now propose to find, and invite public comment on the proposed findings, that Louisiana has fully satisfied the conditions associated with the earlier approval.

The proposed findings document for Louisiana's program is available at *www.regulations.gov* (search for NOAA–NOS–2020–0100) and information on the Coastal Nonpoint Program in general is available on the NOAA website at *https://coast.noaa.gov/czm/pollution control/.*

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services, Environmental Protection Agency.

Radhika Fox,

Assistant Administrator, Office of Water, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–01586 Filed 1–26–22; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–34–000.
Applicants: Consolidated Water Power Company, BillerudKorsnäs AB.
Description: Supplement to January 7, 2022 Joint Application for Authorization Under Section 203 of the Federal Power Act of Consolidated Water Power Company, et al.
Filed Date: 1/21/22.
Accession Number: 20220121–5014.
Comment Date: 5 p.m. ET 1/31/22.

Docket Numbers: EC22–37–000.
Applicants: Energy Center Dover LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Energy Center Dover LLC.
Filed Date: 1/21/22.
Accession Number: 20220121–5150.
Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: EC22–38–000.
Applicants: Otter Tail Power Company.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Otter Tail Power Company, et al.
Filed Date: 1/20/22.
Accession Number: 20220120–5186.
Comment Date: 5 p.m. ET 2/10/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–740–000.
Applicants: GridLiance West LLC.
Description: Supplement to December 29, 2021 Annual Informational Filing of 2022 Projected Net Revenue Requirement and 2020 True-Up Adjustment of GridLiance West LLC.
Filed Date: 1/21/22.
Accession Number: 20220121–5129.
Comment Date: 5 p.m. ET 1/31/22.

Docket Numbers: ER22–857–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 340 to be effective 1/19/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5053.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–858–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: 205: CRA between Niagara Mohawk and RG&E for Station 56 (SA 2680) to be effective 12/22/2021.

Filed Date: 1/21/22.

Accession Number: 20220121–5061.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–859–000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Amended GIA DSA AM Wind Repower SA No 1061 1062 WDT1444 to be effective 3/23/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5068.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–860–000.

Applicants: Blackwell Wind, LLC.

Description: Tariff Amendment: Blackwell Wind, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 1/22/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5110.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–861–000.

Applicants: Crystal Lake Wind III, LLC.

Description: Tariff Amendment: Crystal Lake Wind III, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 1/22/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5113.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–862–000.

Applicants: Ensign Wind, LLC.

Description: Tariff Amendment: Ensign Wind, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 1/22/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5115.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–863–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: ISO–NE and NEPOOL; Rev. Related to Non-Commercial Capacity Trading FA to be effective 3/22/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5118.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–865–000.

Applicants: Glaciers Edge Wind Project, LLC.

Description: § 205(d) Rate Filing: Reactive Power Rate Schedule Filing—Glaciers Edge Wind to be effective 4/1/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5144.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–866–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC—NCEMC—Revisions to Rate Schedule No. 273 to be effective 1/1/2021.

Filed Date: 1/21/22.

Accession Number: 20220121–5154.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER22–867–000.

Applicants: Long Ridge Retail Electric Supplier LLC.

Description: Baseline eTariff Filing: Application For Market Based Rate to be effective 1/22/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5168.

Comment Date: 5 p.m. ET 2/11/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01635 Filed 1–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–493–000.

Applicants: Fayetteville Express Pipeline LLC.

Description: § 4(d) Rate Filing: Update to GT&C Section 36 to be effective 3/1/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5043.

Comment Date: 5 p.m. ET 2/2/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01634 Filed 1–26–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL22–22–000]

PJM Interconnection, L.L.C.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On January 21, 2022, the Commission issued an order in Docket No. EL22–22–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether PJM Interconnection, L.L.C.'s Alternative Offer Cap Provisions are unjust, unreasonable, unduly

discriminatory or preferential. *PJM Interconnection, L.L.C.,* 178 FERC ¶ 61,021 (2022).

The refund effective date in Docket No. EL22–22–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–22–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: January 21, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01636 Filed 1–26–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2021–0146; FRL–8682–09–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings for December 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires the Environmental Protection Agency (EPA) to publish in the **Federal Register** a statement of its findings after its review of certain TSCA notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from December 1, 2021 to December 31, 2021.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Rebecca Edelstein, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–1667 email address: *Edelstein.rebecca@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0146, is available online at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is opened to visitors by appointment only. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from December 1, 2021 to December 31, 2021.

III. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially

exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. What are the statements of administrator Findings under TSCA section 5(a)(3)(C)?

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

○ EPA case number assigned to the TSCA section 5(a) notice.

○ Chemical identity (generic name if the specific name is claimed as CBI).

○ Website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA case No.	Chemical identity	Website link
P–18–0348	Ethanol, 2,2'-[1,4-phenylenebis(oxy)]bis-, polymer with 1,6-diisocyanatohexane and .alpha.-hydro-.omega.-hydroxypoly(oxy-1,4-butanediyl) (specific).	*https://www.epa.gov/system/files/documents/2022-01/p-18-0348_determination_non-cbi_final.pdf.*
P–20–0018; P–20–0019; P–20–0020; P–20–0021.	P–20–0018, P–20–0019, P–20–0020: Fatty acid dimers, polymers with glycerol and triglycerides (generic) P–20–0021: Fatty acid dimers, polymers with glycerol and fatty acids (generic).	*https://www.epa.gov/system/files/documents/2022-01/p-20-0018-0021_determination_non-cbi_final.pdf.*
P–21–0120	2-Alkenoic acid, 2-alkyl-, 2-hydroxyalkyl ester, homopolymer, ester with N-[3-[(carboxyamino)alkyl]-3,5,5- trialkylcycloalkyl]carbamic acid mono [2-(2-alkoxyethoxy)alkyl] ester, N-[3-[(carboxyamino)alkyl]-3,5,5- trialkylcycloalkyl] carbamic acid mono [2-(dialkylamino) alkyl] ester and 2-oxepanone polymer with tetrahydro- 2H-pyran-2-one 2-alkylhexyl ester N-[3-(carboxyamino)alkyl phenyl] carbamate, 1,1-dialkylpropyl 2-alkylhexaneperoxoate—initiated (generic).	*https://www.epa.gov/system/files/documents/2022-01/p-21-0120_determination_non-cbi_final.pdf.*
P–21–0135	Alkenoic acid, allyl-, (dialkylamino)alkyl ester, polymer with dialkyl-alkylene-alkanediyl)bis[carbomoncycle], alkylalkyl alkyl-alkenoate and alkanediol mono(2-alkyl-alkenoate), diazenediyl)bis[2-alkylalkanenitrile]-initiated, (generic).	*https://www.epa.gov/system/files/documents/2022-01/p-21-0135_determination_non-cbi_final.pdf.*
P–21–0186; P–21–0187.	glycerin, alkoxylated alkyl acid esters (generic)	*https://www.epa.gov/system/files/documents/2022-01/p-21-0186-0187_determination_non-cbi_final.pdf.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 24, 2022.

Madison Le,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2022–01647 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0660; FRL–9507–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Nonmetallic Mineral Processing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Nonmetallic Mineral Processing (EPA ICR Number 1084.15, OMB Control Number 2060–0050), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently-approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0660, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *https://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Nonmetallic Mineral Processing (40 CFR part 60, subpart OOO) apply to the following affected facilities in fixed or portable nonmetallic mineral processing plants: Each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station, which commenced construction, modification or reconstruction after August 31, 1983. Also, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin are subject to the provisions of the subpart. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subpart OOO.

Form Numbers: None.

Respondents/affected entities: Nonmetallic mineral processing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart OOO).

Estimated number of respondents: 5,294 (total).

Frequency of response: Initially and occasionally.

Total estimated burden: 20,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,700,000 (per year), which includes $228,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The adjustment increase in burden from the most-recently approved ICR is due to an increase in the number of new or modified sources. The number of respondents in this ICR has been adjusted to reflect growth from new or modified sources over the past three years. There are no significant changes to the capital costs because this ICR assumes a constant rate of new or modified sources consistent with the prior ICR; there are no operation and maintenance costs associated with this collection. The adjustments result in an overall increase in burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01588 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0654; FRL–9499–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Beverage Can Surface Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''NSPS for Beverage Can Surface Coating (EPA ICR Number 0663.14, OMB Control Number 2060–0001), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0654, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *https://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Beverage Can Surface Coating (40 CFR part 60, subpart WW) were proposed on November 26, 1980; promulgated on August 25, 1983; and most-recently amended on October 17, 2000. These regulations apply to each operation of the following surface coating lines in the Beverage Can Surface Coating industry: (1) Exterior base; (2) over-varnished; and (3) inside spray. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. This information is being collected to assure compliance with 40 CFR part 60, subpart WW.

Form Numbers: None.

Respondents/affected entities: Beverage can surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart WW)

Estimated number of respondents: 46 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 4,970 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $686,000 (per year), which includes $97,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an overall decrease in burden from the most-recently approved ICR due to adjustments. This decrease is not due to any program changes: There is a decrease in the total burden hours from the most-recently approved ICR because of a decrease in the number of sources subject to these standards. This ICR incorporates more accurate estimates of existing sources based on a review of beverage can surface coating operations subject to other federal regulations. The decrease in the number of respondents also results in a decrease in the operation and maintenance costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01591 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0013, FRL–9505–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Revisions to the RCRA Definition of Solid Waste (Renewal)

AGENCY: Environmental Protection Agency

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Revisions to the Resource Conservation and Recovery Act (RCRA) Definition of Solid Waste (EPA ICR Number 2310.07, OMB Control Number 2050–0202) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested via the **Federal Register** on June 28, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0013, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Tracy Atagi, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0511; email address: *Atagi.Tracy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Abstract: In 2018, the EPA published final revisions to the definition of solid waste that exclude certain hazardous secondary materials from regulation (83 FR 24664, May 30, 2018). The 2018 final rule was promulgated in response to orders issued by the United States Court of Appeals for the District of Columbia Circuit on July 7, 2017, and amended on March 6, 2018, vacating certain provisions of the 2015 rule and reinstated corresponding provisions from the 2008 rule. The information requirements help ensure that (1) entities operating under the regulatory exclusions are held accountable to the applicable requirements; (2) state inspectors can verify compliance with

the restrictions and conditions of the exclusions when needed; and (3) hazardous secondary materials exported for recycling are actually handled as commodities abroad. Recordkeeping requirements include:

• Under the generator-controlled exclusion at 40 CFR 261.4(a)(23), the tolling contractor has to maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In addition, facilities performing the recycling of hazardous secondary materials under the generator-controlled exclusions at 40 CFR 261.4(a)(23) to maintain documentation of their legitimacy determination onsite.

• Under the transfer-based exclusion at 40 CFR 261.4(a)(24), a generator sending secondary hazardous materials to a facility that does not have a permit, would be required to conduct a ''reasonable efforts'' environmental audit of the receiving facility; and a hazardous secondary materials recycler must meet the following conditions: Having financial assurance in place, having trained personnel, and meeting emergency preparedness and response conditions.

• Under the export requirements of the transfer-based exclusion at 40 CFR 261.4(a)(25), exporters of hazardous secondary material must provide notice and obtain consent of the receiving country and file an annual report.

• Under the remanufacturing exclusion at 40 CFR 261.4(a)(27), both the hazardous secondary material generator and the remanufacturer must maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments.

• Under the revised speculative accumulation requirement in 261.1(c)(8), all persons subject to the speculative accumulation requirements must label the storage unit by indicating the first date that the material began to be accumulated.

Form Numbers: None.

Respondents/affected entities: Private business or other for-profit, as well as State, Local, or Tribal governments.

Respondent's obligation to respond: Required to obtain or retain a benefit (42 U.S.C. 6921, 6922, 6923, and 6924.)

Estimated number of respondents: 4,848.

Frequency of response: On occasion.

Total estimated burden: 36,760 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,793,420 (per year), which includes $18,403 in annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 1,877 hours compared to the currently approved ICR due mainly to the inclusion of State Agency burden. There were no program changes.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01587 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0655; FRL–9508–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Metallic Mineral Processing Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Metallic Mineral Processing Plants (EPA ICR Number 0982.13, OMB Control Number 2060–0016), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0655, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Metallic Mineral Processing Plants (40 CFR part 60, subpart LL) apply to the following facilities at metallic mineral processing plants: Each crusher and screen at open-pit mines and each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, and truck loading and unloading station at mills or concentrators commencing construction, modification or reconstruction after the date of proposal. The NSPS does not apply to facilities located in underground mines or uranium ore beneficiation processing plants. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to

maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subpart LL.

Form Numbers: None.

Respondents/affected entities: Metallic mineral processing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart LL).

Estimated number of respondents: 29 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 3,350 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $416,000 (per year), which includes $18,900 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. This increase is not due to any program changes. The adjustment increase in burden from the most recently-approved ICR is primarily due to a more accurate estimate of existing sources, which is based more recent information from EPA's Enforcement and Compliance History Online database. Additionally, EPA increased the person-hours per occurrence for familiarization with rule requirements; records of startup, shutdown, and malfunction; and time to train personnel based on comments received from industry consultations. The increase in operation and maintenance (O&M) costs as calculated in section 6(b)(iii), compared with the costs in the previous ICR, is due the increase in the estimate of existing sources.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01644 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0085; FRL–9509–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for New Residential Wood Heaters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NSPS for New Residential Wood Heaters (EPA ICR Number 1176.14, OMB Control Number 2060–0161), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0085, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Manufacturers of wood heaters and testing laboratories and third-party certifiers are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the applicable specific standards in 40 CFR part 60 Subpart AAA. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Manufacturers of wood heating appliances, testing laboratories, third-party certifiers.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart AAA).

Estimated number of respondents: 62 (total).

Frequency of response: Annually, biennially, every five years.

Total estimated burden: 4,380 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,180,000 (per year), which includes $657,000 in annualized capital startup and/or operation & maintenance costs.

Changes in the Estimates: There is an increase in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to several considerations. Among other considerations, the number of manufacturers and the number of certified woodstove model lines have both increased since the previous ICR.

These two factors have contributed to an increase in respondents, labor burden, and in the number of responses.

The growth rate for manufacturers entering this industry has slowed since the previous ICR, and no new respondents are expected during the three-year period of this ICR. The number of existing testing laboratories and third-party certifiers has remained constant since the previous ICR. The capital/startup costs have decreased since the previous ICR, which occurred during a period when manufacturers were introducing approximately 30 new model lines each year to comply with Step 2 requirements. In this ICR, we expect the introduction of new model lines to be 15 per year. This results in a decrease in capital/startup costs for performance testing and new model certification. There is an increase in operation and maintenance (O&M) costs reflecting the increase in model lines that are tested as part of the manufacturers Quality Assurance Program. Also, in this ICR, we have reorganized Table 1, Table 2, and the Total Annual Responses tables to separate requirements for new model lines from existing model lines. This ICR also reorganizes the Capital/Startup vs. Operation and Maintenance (O&M) Costs table to distinguish between initial costs for new models and operation and maintenance costs for existing models. Additionally, this ICR adjusts the labor assumptions for the 'burden' associated with manufacturer review of QA annual audit reports provided by third-party certifiers to reflect that audits are anticipated to be performed for all of a single manufacturer's model lines in one visit and the results of the audits would be presented in a single batch or report for manufacturer review. Similarly, this ICR assumes that third-party certifiers will prepare the QA annual audit report on a manufacturer, rather than model line, basis. Finally, this ICR also adjusts the labor assumptions associated with recordkeeping requirements for manufacturers for test documentation and for retention of sealed stoves to reflect that the number of model lines per manufacturer and the frequency of the activity. These adjustments minimally reduce burden for these activities, however, there remains an overall increase in burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01637 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0006; FRL–9497–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPA ICR Number 1352.16, OMB Control Number 2050–0072) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested via the **Federal Register** on August 20, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments to EPA, referencing Docket ID No. EPA–HQ–SFUND–2004–0006; online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Wendy Hoffman, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8794; email address: *hoffman.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.* For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 (42 U.S.C. 11011, 11012). EPCRA section 311 requires owners and operators of facilities subject to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS) to submit a list of chemicals or Material Safety Data Sheets (MSDSs) (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC) or Tribal Emergency Response Commission (TERC), Local Emergency Planning Committee (LEPC) or Tribal Emergency Planning Committee (TEPC), and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a facility becomes subject to the regulations or has updated information on the hazardous chemicals that were already submitted by the facility. EPCRA section 312 requires owners and operators of facilities subject to the OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the

SERC (or TERC), LEPC (or TEPC), and LFD with jurisdiction over their facility. This inventory form, the Tier II Emergency and Hazardous Chemical Inventory Form, is to be submitted on or before March 1 of each year and must include the inventory of hazardous chemicals present at the facility in the previous calendar year. Currently, all states require facilities to submit the Federal Tier II form or the state-equivalent, including electronic submission.

Form Numbers: Tier I Emergency and Hazardous Chemical Inventory Form, EPA Form No. 8700–29, Tier II Emergency and Hazardous Chemical Inventory Form, EPA Form No. 8700–30.

Respondents/affected entities: Manufacturers and non-manufacturers required to have available a MSDS (or Safety Data Sheet (SDS)) under the OSHA HCS.

Respondent's obligation to respond: Mandatory (sections 311 and 312 of EPCRA).

Estimated number of respondents: 471,787 facilities (total). This figure includes 3,052 LEPCs and SERCs.

Frequency of response: Annual.

Total estimated burden: 6,963,271 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $306,735,727 (per year), includes $1,715,094 annualized capital or operation & maintenance costs.

Changes in the Estimates: O&M costs were reduced from the previous ICR renewal for two reasons. First, mailing costs were reduced by two-thirds because electronic communications have greatly reduced the reliance on the use of mail services. In addition, EPA no longer assumes that filing cabinets used to store paper forms are replaced every 15 years. Instead, EPA now believes it is more reasonable to assume that the file cabinets are used indefinitely.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01590 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0643; FRL–9510–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Municipal Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NSPS for Municipal Waste Combustors (EPA ICR Number 1506.14, OMB Control Number 2060–0210), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0643, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *https://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Municipal Waste Combustors (40 CFR part 60, subparts Ea and Eb) apply to existing and new facilities with a municipal waste combustor unit capacity greater than 225 megagrams per day of municipal solid waste. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subparts Ea and Eb.

Form Numbers: None.

Respondents/affected entities: Owners and operators of municipal waste combustor units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Ea and Eb).

Estimated number of respondents: 22 (total).

Frequency of response: Initially, quarterly, semiannually, and annually.

Total estimated burden: 32,600 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,320,000 (per year), which includes $197,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The decrease in burden from the most-recently approved ICR is due to more accurate estimations in both the number of new and existing sources. The number of new sources is revised down from one to zero as there is no indication of any new MWC facilities being constructed over the next three years. The number of existing sources subject to 40 CFR part 60, subpart Ea has been revised from the most-recently approved ICR to reflect

the closure of one facility. The decrease in respondents subject to subpart Ea also results in a decrease to the operation and monitoring costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01641 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0669; FRL–9498–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Sewage Sludge Incinerators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Emission Guidelines for Sewage Sludge Incinerators (EPA ICR Number 2403.06, OMB Control Number 2060–0661), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested via the **Federal Register** on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0669, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *https://www.epa.gov/dockets.*

Abstract: Owners and operators of sewage sludge incineration units are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the applicable standards in 40 CFR part 60, subpart MMMM and 40 CFR part 62 subpart LLL. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by the EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Owners and operators of existing sewage sludge incinerators.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart MMMM and 40 CFR part 62, subpart LLL).

Estimated number of respondents: 86 (total).

Frequency of response: Semiannually, annually.

Total estimated burden: Respondent burden is 32,800 hours (per year), while the State/local agency burden for administering the same rule is 1,880 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: Respondent cost is $5,230,000 (per year); this sum includes $1,350,000 annualized capital/startup and/or operation & maintenance costs. State/local agency cost is $106,000 (per year).

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens for respondents. This situation is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup and/or operation and maintenance (O&M) costs.

This ICR also adjusts the number of respondents subject to the requirements of Subpart MMMM which are implemented under State plans and a Federal Plan to incorporate the burden associated with the Federal Plan. The Federal Plan was finalized at 40 CFR part 62, subpart LLL on April 29, 2016. As of June 3, 2021, the EPA data and the listing of approved State plans in the eCFR indicates that 9 State and local agencies enforce the State plans and the remainder of these SSI units will be covered by the Federal Plan. The burden on State and local agencies is included in respondent burden in this ICR, and is similar to the Agency burden in the previous ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01592 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM).

TIME AND DATE: Thursday, February 24, 2022, from 2:00 p.m.–4:00 p.m. EDT.

PLACE: The meeting will be held virtually.

STATUS: *Public Participation:* The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register for the meeting at *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,5M1LfonJMEi2VFUgYRv6oQ,i145n2l9vkmDj5btNlkuGw,x0C4PsIxqEe3e1J4MkfX9A,PdrWkxBplEaPp-Y8sXyvBg,4YXl84_USEajrqMjPef8Gw?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist at 202–480–0062.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–01812 Filed 1–25–22; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–03]

One Banana North America Corp., Complainant v. Hapag-Lloyd AG and Hapag-Lloyd (America) LLC, Respondents; Notice of Filing of Complaint and Assignment

Served: January 24, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by One Banana North America Corp, hereinafter ''Complainant,'' against Hapag-Lloyd AG and Hapag-Lloyd (America) LLC, hereinafter ''Respondents.'' Complainant is a Florida corporation that ships fresh bananas from Central and South America to the United States, where it sells them to various wholesalers and retailers. Complainant alleges that Respondent Hapag Lloyd AG is a German company, Respondent Hapag-Lloyd (America) LLC is a Delaware company, and that Respondents are common carriers.

Complainant alleges that Respondents violated 46 U.S.C 41102(c), 46 CFR 545.4 and 545.5, and 46 U.S.C. 41104(a)(10) with regard to the movement of refrigerated containers. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-03/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by January 24, 2023, and the final decision of the Commission shall be issued by August 7, 2023.

William Cody,

Secretary.

[FR Doc. 2022–01598 Filed 1–26–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 February 11, 2022.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *The Revised and Restated Connor Family Voting Trust and Richard M. Connor, Jr., Brian Luc Connor, and Susan J. Connor, as co-trustees, all of Laona, Wisconsin;* to join the Connor family shareholder group acting in concert to acquire voting shares of Northern Wisconsin Bank Holding Company, Inc., and thereby indirectly acquire Laona State Bank, both of Laona, Wisconsin.

Board of Governors of the Federal Reserve System, January 24, 2022.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–01646 Filed 1–26–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks (FR 2644; OMB No. 7100–0075).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2644.

OMB control number: 7100–0075.

Effective date: April 6, 2022.

Frequency: Weekly.

Respondents: Domestically chartered commercial banks and U.S. branches and agencies of foreign banks.

Estimated number of respondents: 850.

Estimated average hours per response: 2.19.

Estimated annual burden hours: 96,798.

General description of report: The FR 2644 is a balance sheet report that is collected as of each Wednesday from an authorized stratified sample of 875 domestically chartered commercial banks and U.S. branches and agencies of foreign banks. The FR 2644 is the only source of high-frequency data used in the analysis of current banking developments. The FR 2644 collects sample data that are used to estimate universe levels for the entire commercial banking sector in conjunction with data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100–0036) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032) (Call Reports). Data from the FR 2644 and the Call Reports are utilized in construction of weekly estimates of U.S. bank credit, balance sheet data for the U.S. commercial banking sector, and sources and uses of banks' funds, and to analyze current banking developments, including the monitoring of broad credit and funding conditions. The Board publishes the data in aggregate form in the weekly H.8 statistical release, Assets and Liabilities of Commercial Banks in the United States, which is followed closely by other government agencies, the banking industry, financial press, and other users.[1] The H.8 release provides a balance sheet for the commercial banking industry as a whole as well as data disaggregated by its large domestic, small domestic and foreign-related bank components.

Legal authorization and confidentiality: The FR 2644 is authorized by section 2A of the Federal Reserve Act (FRA), which states that the Board ''shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates'' (12 U.S.C. 225a.) and by section 11(a)(2) of the FRA, which authorizes the Board to require a depository institution to provide ''reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates'' (12 U.S.C. 248(a)(2)). Section 7(c)(2) of the International Banking Act of 1978 makes U.S. branches and agencies of foreign banks subject to the reporting requirements of section 11(a)(2) of the FRA (12 U.S.C. 3105(c)(2)). The FR 2644 is voluntary, although the Board would have the authority to require depository institutions to file these reports.

Although the Board releases aggregate data derived from the FR 2644 in the weekly H.8 Statistical Release, individual bank information provided by each respondent is treated as confidential because that information constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and thus may be kept confidential by the Board pursuant to exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Current actions: On October 5, 2021, the Board published a notice in the **Federal Register** (86 FR 54975) requesting public comment for 60 days on the extension, with revision, of the Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks. The Board proposed revisions that would simplify and reduce the overall reporting requirements associated with the FR 2644 collection, including: (1) Eliminating the data items on net unrealized gains (losses) on available-for-sale securities (Memoranda items 1 and 1.a); (2) Revising the reporting instructions for foreign-related institutions pertaining to consumer loans and the allowance for loan and lease losses to bring them in line with these institutions' Call Report; (3) Changing the reporting instructions for small domestically chartered commercial banks for loans to, and acceptances of, commercial banks in the U.S. (item 4.b); and (4) Reducing the authorized sample of domestically chartered commercial banks and U.S. agencies and branches of foreign banks from the current 875 respondents to 850. In addition to the initial proposed revisions, the Board will make a clarifying change to item 4g of the form to align with the instructions. The comment period for this notice expired on December 6, 2021. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, January 24, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–01659 Filed 1–26–22; 8:45 am]

BILLING CODE 6210–01–P

[1] The H.8 release is available on the Board's website, *http://www.federalreserve.gov/releases/h8/current/default.htm.*

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission (FTC) requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the FTC's Red Flags, Card Issuers, and Address Discrepancy Rules (Rules). That clearance expires on January 31, 2022.

DATES: Comments must be received by February 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. The reginfo.gov web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Whitney Moore, Attorney, Division of Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–8232, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–2645.

SUPPLEMENTARY INFORMATION:

Title: Red Flags Rule, 16 CFR 681.1; Card Issuers Rule, 16 CFR 681.2; Address Discrepancy Rule, 16 CFR part 641.

OMB Control Number: 3084–0137.

Type of Review: Extension of currently approved collection.

Abstract: The Red Flags Rule requires financial institutions and certain creditors to develop and implement written Identity Theft Prevention Programs. The Card Issuers Rule requires credit and debit card issuers to assess the validity of notifications of address changes under certain circumstances. The Address Discrepancy Rule provides guidance on what covered users of consumer reports must do when they receive a notice of address discrepancy from a nationwide consumer reporting agency. Collectively, these three anti-identity theft provisions are intended to prevent impostors from misusing another person's personal information for a fraudulent purpose.

The Rules implement sections 114 and 315 of the Fair Credit Reporting Act (''FCRA''), 15 U.S.C. 1681 *et seq.*

Estimated Annual Burden: (397,298 hours; $20,103,752 in labor costs).

A. Section 114: Red Flags and Card Issuers Rules:
(1) Red Flags:
(a) *Estimated Number of Respondents:* 164,591
(i) *High-Risk Entities:* 99,830 [1]
(ii) *Low-Risk Entities:* 64,761 [2]
(b) *Estimated Hours Burden:*
(i) *High-Risk Entities:* 342,900 hours
(ii) *Low-Risk Entities:* 16,523 hours
(2) Card Issuers Rule:
(a) *Estimated Number of Respondents:* 18,894 [3]
(b) *Estimated Hours Burden:* 20,508 hours
(3) *Combined Labor Cost Burden:* $19,756,412

B. Section 315—Address Discrepancy Rule:
(1) *Estimated Number of Respondents:* 44,000
(2) *Estimated Hours Burden:* 17,367 hours
(3) *Estimated Labor Cost Burden:* $347,340

C. Capital/Non-Labor Costs for Sections 114 and 315

FTC staff believes that the Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.,* offices and computers) for the information collections described herein.

Request for Comment

On October 15, 2021, the FTC sought public comment on the information collection requirements associated with the Rule. 86 FR 57425. The Commission received no germane comments. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rules.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential'' —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–01539 Filed 1–26–22; 8:45 am]

BILLING CODE 6750–01–P

[1] High-risk entities include, for example, financial institutions within the FTC's jurisdiction and utilities, motor vehicle dealerships, telecommunications firms, colleges and universities, and hospitals.

[2] Low-risk entities include, for example, public warehouse and storage firms, nursing and residential care facilities, automotive equipment rental and leasing firms, office supplies and stationery stores, fuel dealers, and financial transaction processing firms.

[3] FTC staff estimates that the Rule affects as many as 18,356 card issuers within the FTC's jurisdiction. This includes, for example, state credit unions, general retail merchandise stores, colleges and universities, and telecoms.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3240]

List of Bulk Drug Substances for Which There Is a Clinical Need Under Section 503B of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency or we) is evaluating substances that have been nominated for inclusion on a list of bulk drug substances (*i.e.,* active pharmaceutical ingredients) for which there is a clinical need (the 503B Bulks List). Drug products that outsourcing facilities compound using bulk drug substances on the 503B Bulks List can qualify for certain exemptions from the Federal Food, Drug, and Cosmetic Act (FD&C Act) provided certain conditions are met. This notice identifies four bulk drug substances that FDA has considered and is including on the list at this time: Diphenylcyclopropenone (DPCP) for topical use only, glycolic acid for topical use only in concentrations up to 70 percent, squaric acid dibutyl ester (SADBE) for topical use only, and trichloroacetic acid (TCA) for topical use only. This notice also identifies eight bulk drug substances that FDA has considered and is not including on the list at this time: diazepam, dipyridamole, dobutamine hydrochloride (HCl), dopamine HCl, edetate calcium disodium, folic acid, glycopyrrolate, and sodium thiosulfate (except for topical administration). Additional bulk drug substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of future notices.

DATES: The announcement of the notice is published in the **Federal Register** on January 27, 2022.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this notice into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Kemi Asante, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 51, Rm. 2247, Silver Spring, MD 20993, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

Section 503B of the FD&C Act (21 U.S.C. 353b) describes the conditions that must be satisfied for drug products compounded in an outsourcing facility to be exempt from section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)), section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use), and section 582 of the FD&C Act (21 U.S.C. 360eee–1) (concerning drug supply chain security requirements).[1]

Compounded drug products that meet the conditions in section 503B are not exempt from current good manufacturing practice (CGMP) requirements in section 501(a)(2)(B) of the FD&C Act (21 U.S.C. 351(a)(2)(B)).[2] Outsourcing facilities are also subject to FDA inspections according to a risk-based schedule, adverse event reporting requirements, and other conditions that help to mitigate the risks of the drug products they compound.[3] Outsourcing facilities may or may not obtain prescriptions for identified individual patients and can, therefore, distribute compounded drugs to healthcare practitioners for ''office stock,'' to hold in their offices in advance of patient need.[4]

One of the conditions that must be met for a drug product compounded by an outsourcing facility to qualify for the exemptions under section 503B of the FD&C Act is that the outsourcing facility may not compound a drug using a bulk drug substance unless: (1) The bulk drug substance appears on a list established by the Secretary of Health and Human Services (the Secretary) identifying bulk drug substances for which there is a clinical need (the 503B Bulks List) or (2) the drug compounded from the bulk drug substance appears on the drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e) at the time of compounding, distribution, and dispensing.[5]

Section 503B of the FD&C Act directs FDA to establish the 503B Bulks List by: (1) Publishing a notice in the **Federal Register** proposing bulk drug substances to be included on the list, including the rationale for such proposal; (2) providing a period of not less than 60 calendar days for comment on the notice; and (3) publishing a notice in the **Federal Register** designating bulk drug substances for inclusion on the list.[6]

For purposes of section 503B of the FD&C Act, *bulk drug substance* means an active pharmaceutical ingredient as defined in 21 CFR 207.1.[7] *Active pharmaceutical ingredient* means any substance that is intended for incorporation into a finished drug product and is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body, but the term does not include intermediates used in the synthesis of the substance.[8] [9]

FDA has published a series of **Federal Register** notices addressing bulk drug substances nominated for inclusion on the 503B Bulks List.[10] This notice identifies four bulk drug substances that FDA has considered and is including on the 503B Bulks List and eight bulk drug substances that FDA has considered and is not including on the 503B Bulks List.

II. Methodology for Developing the 503B Bulks List

A. Process for Developing the List

FDA requested nominations for specific bulk drug substances for the Agency to consider for inclusion on the 503B Bulks List in the **Federal Register** of December 4, 2013 (78 FR 72838). FDA reopened the nomination process in the **Federal Register** of July 2, 2014 (79 FR 37747), and provided more detailed information on what FDA needs to evaluate nominations for the list. In the **Federal Register** of October 27, 2015 (80 FR 65770), the Agency opened a new docket, FDA–2015–N–3469, to provide an opportunity for interested persons to submit new nominations of bulk drug substances, renominate substances with sufficient information, or submit comments on nominated substances.

As FDA evaluates bulk drug substances, it intends to publish notices for public comment in the **Federal Register** that describe its proposed position on each substance along with the rationale for that position.[11] After considering any comments on FDA's proposals regarding whether to include nominated substances on the 503B Bulks List, FDA intends to consider whether input from the Pharmacy Compounding Advisory Committee (PCAC) on the nominations would be helpful to the Agency in making its determination, and if so, it will seek PCAC input.[12] Depending on its review of the docket comments and other relevant information before the Agency, FDA may finalize its proposed determination without change, or it may finalize a modification to its proposal to reflect new evidence or analysis regarding clinical need. FDA will then publish in the **Federal Register** a final determination identifying the bulk drug substances for which it has determined there is a clinical need and FDA's rationale in making that final determination. FDA will also publish in the **Federal Register** a final determination regarding those substances it considered but found that there is no clinical need to use in compounding and FDA's rationale in making this decision.

FDA intends to maintain a list of all bulk drug substances it has evaluated on its website, and separately identify bulk drug substances it has placed on the 503B Bulks List and those it has decided not to place on the 503B Bulks List. This list is available at *https://www.fda.gov/media/120692/download.* FDA will only place a bulk drug substance on the 503B Bulks List when it has determined there

[1] Section 503B(a) of the FD&C Act.

[2] Compare section 503A(a) of the FD&C Act (21 U.S.C. 353a(a) (exempting drugs compounded in accordance with that section) with section 503B(a) of the FD&C Act (not providing the exemption from CGMP requirements).

[3] Section 503B(b)(4) and (5) of the FD&C Act.

[4] Section 503B(d)(4)(C) of the FD&C Act.

[5] Section 503B(a)(2)(A) of the FD&C Act.

[6] Section 503B(a)(2)(A)(i)(I) to (III) of the FD&C Act.

[7] 21 CFR 207.3.

[8] Section 503B(a)(2) of the FD&C Act and 21 CFR 207.1.

[9] Inactive ingredients are not subject to section 503B(a)(2) of the FD&C Act and will not be included in the 503B Bulks List because they are not included within the definition of a bulk drug substance. Pursuant to section 503B(a)(3), inactive ingredients used in compounding must comply with the standards of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph, if a monograph exists.

[10] See **Federal Register** of August 28, 2018 (83 FR 43877), March 4, 2019 (84 FR 7383), September 3, 2019 (84 FR 46014), July 31, 2020 (85 FR 46126), and March 24, 2021 (86 FR 15673). The comment period for the July 2020 notice was reopened for 30 days on January 8, 2021 (86 FR 1515), to allow interested parties an additional opportunity to comment. In this notice, FDA is reaching a final determination on whether certain substances evaluated in the September 2019 and July 2020 notices will be included on the 503B Bulks List. The substances considered in the September 2019 and July 2020 notices that are not addressed in this notice remain under consideration by the Agency. In addition, bumetanide, which was considered in the August 2018 notice remains under consideration by the Agency.

[11] This is consistent with procedures set forth in section 503B(a)(2)(A)(i) of the FD&C Act. Although the statute only directs FDA to issue a **Federal Register** notice and seek public comment when it proposes to include bulk drug substances on the 503B Bulks List, we intend to seek comment when the Agency has evaluated a nominated substance and proposes either to include or not to include the substance on the list.

[12] Section 503B of the FD&C Act does not require FDA to consult the PCAC before developing the 503B Bulks List.

is a clinical need for outsourcing facilities to compound drug products using the bulk drug substance. If a clinical need to compound drug products using the bulk drug substance has not been demonstrated, based on the information submitted by the nominator and any other information considered by the Agency, FDA will not place a bulk drug substance on the 503B Bulks List.

FDA is evaluating bulk drug substances nominated for the 503B Bulks List on a rolling basis. FDA intends to evaluate and publish in the **Federal Register** its proposed and final determinations in groups of bulk drug substances until all nominated substances that were sufficiently supported have been evaluated and either placed on the 503B Bulks List or identified as bulk drug substances that were considered but determined not to be appropriate for inclusion on the 503B Bulks List (Ref. 1).[13]

B. Analysis of Substances Nominated for the List

As noted above, the 503B Bulks List will include bulk drug substances for which there is a clinical need. The Agency is evaluating bulk drug substances that were nominated for inclusion on the 503B Bulks List, proceeding case by case, under the standard provided by the statute (Ref. 2).[14] In applying this standard to make determinations regarding the substances set forth in this notice, FDA is interpreting the phrase ''bulk drug substances for which there is a clinical need'' to mean that the 503B Bulks List may include a bulk drug substance if: (1) There is a clinical need for an outsourcing facility to compound the drug product and (2) the drug product must be compounded using the bulk drug substance. FDA is not interpreting supply issues, such as backorders, to be within the meaning of ''clinical need'' for compounding with a bulk drug substance. Section 503B of the FD&C Act separately provides for compounding from bulk drug substances under the exemptions from the FD&C Act discussed above if the drug product compounded from the bulk drug substance is on the FDA drug shortage list at the time of compounding, distribution, and dispensing. Additionally, we are not considering cost of the compounded drug product as compared with an FDA-approved drug product when assessing ''clinical need.''

Eight of the bulk drug substances that we are addressing in this notice are components of FDA-approved drug products,[15] and we evaluated them by asking one or both of the following questions:

1. Is there a basis to conclude, for each FDA-approved product that includes the nominated bulk drug substance, that (a) an attribute of the FDA-approved drug product makes it medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation, and (b) the drug product proposed to be compounded is intended to address that attribute?

2. Is there a basis to conclude that the drug product proposed to be compounded must be produced from a bulk drug substance rather than from an FDA-approved drug product?

The reason for question 1 is that unless an attribute of the FDA-approved drug is medically unsuitable for certain patients, and a drug product to be compounded using a bulk drug substance that is a component of the approved drug is intended to address that attribute, there is no clinical need to compound a drug product using that bulk drug substance. Rather, such compounding would unnecessarily expose patients to the risks associated with drug products that do not meet the standards applicable to FDA-approved drug products for safety, effectiveness, quality, and labeling and would undermine the drug approval process. The reason for question 2 is that to place a bulk drug substance on the 503B Bulks List, FDA must determine that there is a clinical need for outsourcing facilities to compound a drug product *using the bulk drug substance* rather than starting with an FDA-approved drug product. When it is feasible to compound a drug product by starting with an approved drug product, there are certain benefits of doing so over starting with a bulk drug substance, including that approved drugs have undergone premarket review for safety, effectiveness, and quality, and are manufactured by a facility that is subject to premarket assessment, including site inspection, as well as routine post-approval risk-based inspections. In contrast, FDA does not conduct a premarket review of the quality standards, specifications, and controls for bulk drug substances used in compounding and does not conduct a premarket assessment of the manufacturer of the bulk drug substance.

If the answer to both of the above questions is ''yes,'' there may be a clinical need for outsourcing facilities to compound using the bulk drug substance, and we would evaluate the substance further, applying the factors described below. If the answer to either of these questions is ''no,'' we generally would not include the bulk drug substance on the 503B Bulks List, because there would not be a basis to conclude that there may be a clinical need to compound drug products using the bulk drug substance instead of administering or compounding starting with an approved drug product. FDA did not answer ''yes'' to both of the threshold questions for the eight bulk drug substances that are components of approved drug products that we are addressing in this notice. Accordingly, as explained further below, we did not proceed further in our evaluation of these substances and have decided not to include them on the 503B Bulks List.

With respect to four bulk drug substances we are addressing in this notice that are not components of FDA-approved drug products, DPCP, glycolic acid, SADBE, and TCA, we conducted a balancing test with four factors, considered each factor in the context of the others, and balanced them to determine whether the statutory ''clinical need'' standard was met. The balancing test includes the following factors:

- The physical and chemical characterization of the substance;
- any safety issues raised by the use of the substance in compounding;
- the available evidence of effectiveness or lack of effectiveness of a drug product compounded with the substance, if any such evidence exists; and
- current and historical use of the substance in compounded drug products, including information about the medical condition(s) that the substance has been used to treat and any

[13] In January 2017, FDA announced the availability of a revised final guidance for industry that provides additional information regarding FDA's policies for bulk drug substances nominated for the 503B Bulks List pending our review of nominated substances under the ''clinical need'' standard entitled ''Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (the ''Interim Policy''), available at *https://www.fda.gov/media/94402/download.*

[14] In March 2019, FDA announced the availability of a final guidance entitled ''Evaluation of Bulk Drug Substances Nominated for Use in Compounding Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (the ''Clinical Need Guidance''), available at *https://www.fda.gov/media/121315/download.* This guidance describes FDA policies for developing the 503B Bulks List and the Agency's interpretation of the phrase ''bulk drug substances for which there is a clinical need'' as it is used in section 503B. The analysis under the statutory ''clinical need'' standard described in this notice is consistent with the approach described in FDA's guidance.

[15] Specifically, diazepam, dipyridamole, dobutamine HCl, dopamine HCl, edetate calcium disodium, folic acid, glycopyrrolate, and sodium thiosulfate.

references in peer-reviewed medical literature.

The discussion below reflects FDA's consideration of these four factors where they are applicable and describes how they were applied to develop FDA's decision to include four bulk drug substances on the 503B Bulks List.

C. Inclusion of a Bulk Drug Substance on the 503B Bulks List or Exclusion From the List

In evaluating a substance for the 503B Bulks List, FDA considered whether the clinical need for the bulk drug substance in the compounded drug product is limited, by, for example, route of administration or dosage form. As appropriate, and as explained further below, the Agency tailored its entries on the 503B Bulks List to reflect its findings related to clinical need for these bulk substances. Specifically, the listings for DCPC, glycolic acid, SADBE, and TCA are limited to the use of these bulk drug substances to compound drug products for topical use only.

In the **Federal Register** notice of July 31, 2020, which proposed updates to the 503B Bulks List, FDA solicited comment on whether: (1) To allow compounding of drug products containing only the listed bulk drug substance and no other active ingredients or (2) to allow compounding of drug products that contain the listed bulk drug substance without limits on compounding a drug product that contains other active ingredients (85 FR 46126). FDA received a comment supporting the first option and stating that ''FDA should restrict the use of any bulk drug substance on the 503B Bulks List in combination with one or more other active ingredients, unless there is specific clinical need for the combination product, as determined through FDA evaluation.'' In addition, the comment stated that this approach is important to limit safety risks to patients, particularly given the higher complexity of combination formulations.

FDA has determined that to be eligible for the statutory exemptions under section 503B, drug products compounded using a bulk drug substance that appears on the 503B Bulks List cannot contain other active pharmaceutical ingredients unless those active pharmaceutical ingredients have been listed in combination on the 503B Bulks List. FDA's assessment of the clinical need for compounding with a particular bulk drug substance or combination of bulk drug substances could be affected if a bulk drug substance is commonly used in compounded drug products that contain multiple bulk drug substances (active pharmaceutical ingredients). The use of certain active pharmaceutical ingredients in combination with other active pharmaceutical ingredients in a compounded drug product could also pose a safety risk or affect the compounded drug product's effectiveness. These considerations of the composition of a nominated compounded combination, the history of its use in compounding, and evidence of safety or effectiveness would be included in FDA's clinical need evaluation.

III. FDA's Determinations Regarding Substances Proposed for the 503B Bulks List

In September 2019, the Agency issued a **Federal Register** notice in which it evaluated nine nominated bulk drug substances under the section 503B statutory standard—dipyridamole, ephedrine sulfate, famotidine, hydralazine HCl, methacholine chloride, sodium bicarbonate, sodium tetradecyl sulfate, trypan blue, and vecuronium bromide—and proposed not to include them on the 503B Bulks List (the September 2019 notice).[16] In this notice, after review of the comments submitted to the docket for the September 2019 notice, FDA is making its final determination with regard to dipyridamole. At this time, FDA is not making a final determination regarding ephedrine sulfate, famotidine, hydralazine HCl, methacholine chloride, sodium bicarbonate, sodium tetradecyl sulfate, trypan blue, and vecuronium bromide. These substances remain under consideration by FDA.

In July 2020, the Agency issued a **Federal Register** notice in which it evaluated 23 nominated bulk drug substances under the section 503B statutory standard (the July 2020 notice).[17] FDA proposed to include DPCP, glycolic acid, SADBE, and TCA on the 503B Bulks List. FDA proposed not to include diazepam, dobutamine HCl, dopamine HCl, edetate calcium disodium, folic acid, glycopyrrolate, hydroxyzine HCl, ketorolac tromethamine, labetalol HCl, mannitol, metoclopramide HCl, moxifloxacin HCl, nalbuphine HCl, polidocanol, potassium acetate, procainamide HCl, sodium nitroprusside, sodium thiosulfate, and verapamil HCl on the 503B Bulks List. In this notice, after review of the comments submitted to the docket for the July 2020 notice, FDA is making its final determination for DPCP, glycolic acid, SADBE, TCA, diazepam, dobutamine HCl, dopamine HCl, edetate calcium disodium, folic acid, glycopyrrolate, and sodium thiosulfate. At this time, FDA is not making a final determination regarding hydroxyzine HCl, ketorolac tromethamine, labetalol HCl, mannitol, metoclopramide HCl, moxifloxacin HCl, nalbuphine HCl, polidocanol, potassium acetate, procainamide HCl, sodium nitroprusside, and verapamil HCl. These substances remain under consideration by FDA. Additional bulk drug substances nominated by the public for inclusion on this list are currently under consideration and may be the subject of future notices.

A. Substances Evaluated and Included on the 503B Bulks List

Because the substances in this section are not components of FDA-approved drug products, FDA applied the balancing test described above. The four bulk drug substances that FDA evaluated, proposed to include on the 503B Bulks List in a July 2020 **Federal Register** notice, and is now placing on the 503B Bulks List are: DPCP, glycolic acid, SADBE, and TCA. The reasons for FDA's proposals are included below (Refs. 3–6).[18] Having received no adverse comment, and for the same reasons set forth in those proposals, FDA is now placing these four bulk drug substances on the 503B Bulks List.

1. Diphenylcyclopropenone (DPCP)

DPCP was nominated as a bulk drug substance for the 503B Bulks List to compound drug products for topical use at variable concentrations, usually 2 percent, in the treatment of alopecia areata.[19] The nominated bulk drug substance is not a component of an FDA-approved drug product. We evaluated DPCP for potential inclusion on the 503B Bulks List under the clinical need standard in section 503B of the FD&C Act, considering data and information regarding the physical and chemical characterization of DPCP, safety issues raised by use of this substance in compounding, available evidence of effectiveness or lack of

[16] See 84 FR 46014.

[17] See 85 FR 46126.

[18] As explained in the July notice, the Agency considered data and information from its earlier evaluations regarding the use of these bulk drug substances for the list of bulk drug substances that can be used in compounding under section 503A of the FD&C Act (the 503A Evaluations) in addition to the nominations for the 50B Bulks List. FDA also considered a report provided by the University of Maryland Center of Excellence in Regulatory Science and Innovation and conducted a search for relevant scientific literature and safety information, focusing on materials published or submitted to FDA since the 503A Evaluations.

[19] See Docket No. FDA–2013–N–1524, document no. FDA–2013–N–1524–1363.

effectiveness, and historical and current use in compounding (Ref. 3).

DPCP is well characterized, but there are concerns about stability and consistency in product quality. Although there are still gaps in the evidence for DPCP's safety and effectiveness, including a lack of long-term safety data, substantial human safety data have been collected and clinicians worldwide have gained experience in the use of DPCP to treat alopecia areata. DPCP has been used for several decades to compound drug products for dermatologists to treat alopecia areata and continues to be used for this purpose. The reported adverse effects are related to DPCP's mechanism of therapeutic action as a sensitizer, causing allergic contact dermatitis in treated patients. Alopecia areata may not respond adequately to available treatments. DPCP can be a potentially effective agent for patients who have failed FDA-approved and other therapies for this condition.

On balance, the physical and chemical characterization, safety, effectiveness, and historical and current use of DPCP weigh in favor of including this substance on the 503B Bulks List. No commenters disagreed with FDA's proposal to include DPCP for topical use only on the 503B Bulks List. Accordingly, we are adding DPCP to the 503B Bulks List for topical use only.

2. Glycolic Acid

Glycolic acid was nominated as a bulk drug substance for the 503B Bulks List to compound drug products for topical use at concentrations ranging from 0.08 to 70 percent for the treatment of hyperpigmentation and photodamaged skin.[20] The nominated bulk drug substance is not a component of an FDA-approved drug product. We evaluated glycolic acid for potential inclusion on the 503B Bulks List under the clinical need standard in section 503B of the FD&C Act, considering data and information regarding the physical and chemical characterization of glycolic acid, safety issues raised by use of this substance in compounding, available evidence of effectiveness or lack of effectiveness, and historical and current use in compounding (Ref. 4).

Glycolic acid, also known as hydroxyacetic acid, is physically and chemically well characterized. When used in high concentrations, glycolic acid causes local effects that are typical of a strong acid, such as dermal and eye irritation. Reported adverse reactions were generally limited in duration and readily manageable. There is no information available on long-term outcomes. The available data on short-term outcomes do not raise major safety concerns associated with the topical use of glycolic acid.

Data from controlled clinical trials have shown consistently positive results in the treatment of epidermal melasma or other forms of hyperpigmentation. The available evidence suggests that there is a role for glycolic acid in the treatment of melasma, typically as a second line treatment. There is also some evidence indicating that glycolic acid may be effective for the mitigation of manifestations of photodamaged skin. Glycolic acid has been used for several decades to compound drug products for dermatologists and continues to be used for this purpose. Conclusions regarding each of these factors are for use at concentrations up to 70 percent; data and evidence regarding use of higher concentrations are very limited.

On balance, the physical and chemical characterization, safety, effectiveness, and historical and current use of glycolic acid weigh in favor of including this substance on the 503B Bulks List at concentrations up to 70 percent. No commenters disagreed with FDA's proposal to include glycolic acid on the 503B Bulks List. Accordingly, we are adding glycolic acid to the 503B Bulks List for topical use only in concentrations up to 70 percent.

3. Squaric Acid Dibutyl Ester (SADBE)

SADBE was nominated as a bulk drug substance for the 503B Bulks List to compound drug products for topical use at variable concentrations, ranging from 2 percent initially to 0.0001 percent to 0.001 percent for maintenance, for the treatment of alopecia areata and warts.[21] The nominated bulk drug substance is not a component of an FDA-approved drug product. We evaluated SADBE for potential inclusion on the 503B Bulks List under the clinical need standard in section 503B of the FD&C Act, considering data and information regarding the physical and chemical characterization of SADBE, safety issues raised by use of this substance in compounding, available evidence of effectiveness or lack of effectiveness, and historical and current use in compounding (Ref. 5).

SADBE is well-characterized, but there are concerns about stability and consistency in product quality. There is a lack of adequate nonclinical data, long-term safety data, and safety information about use in specific populations such as pregnant and lactating women. Despite these data gaps, considerable human safety data have accumulated over the past 40 years from its use in compounding drug products for dermatologists to treat alopecia areata and resistant non-genital warts and from reports of its use internationally. The reported adverse effects are related to SADBE's mechanism of therapeutic action as a sensitizer causing allergic contact dermatitis in treated patients.

In addition, both alopecia areata and warts may not respond adequately to available treatments. SADBE can be a potentially effective agent for patients who have failed FDA-approved and other therapies for these conditions. We recognize that treatment with SADBE requires initial sensitization and typical protocols involve a SADBE concentration of 2 percent, but lower concentrations may be used in other patients.

On balance, the physical and chemical characterization, safety, effectiveness, and historical and current use of SADBE weigh in favor of including this substance on the 503B Bulks List. No commenters disagreed with FDA's proposal to include SADBE on the 503B Bulks List. Accordingly, we are adding SADBE to the 503B Bulks List for topical use only.

4. Trichloroacetic Acid (TCA)

TCA was nominated as a bulk drug substance for the 503B Bulks List to compound drug products for topical use at concentrations ranging from 6 percent to 20 percent as a chemical skin peeling agent for the treatment of acne and melasma.[22] The nominated bulk drug substance is not a component of an FDA-approved drug product. We evaluated TCA for potential inclusion on the 503B Bulks List under the clinical need standard in section 503B of the FD&C Act, considering data and information regarding the physical and chemical characterization of TCA, safety

[20] See Docket No. FDA–2015–N–3469, document nos. FDA–2015–N–3469–0035 and FDA–2015–N–3469–0123. One of the nominations also states that prescribers may want glycolic acid compounds in other formulations to treat other conditions, but does not identify the conditions or formulations. It also refers to the use of glycolic acid in combination with other ingredients and, in particular, to compounding a formulation containing hydroquinone 6 percent and tretinoin 0.1 percent. Information submitted with this nomination relevant to compounding with glycolic acid for the treatment of hyperpigmentation disorders and photodamaged skin was considered. FDA's evaluation in this notice does not consider whether there is a clinical need for outsourcing facilities to compound drug products containing glycolic acid and hydroquinone or tretinoin, or other bulk drug substances, which may be the subject of future **Federal Register** notices.

[21] See Docket No. FDA–2013–N–1524, document no. FDA–2013–N–1524–1363.

[22] See Docket No. FDA–2018–D–1067, document no. FDA–2018–D–1067–0005.

issues raised by use of this substance in compounding, available evidence of effectiveness or lack of effectiveness, and historical and current use in compounding (Ref. 6).

TCA is well characterized in its physical and chemical properties. Nonclinical evidence suggests that topical use of TCA does not raise serious safety issues for humans. Although there have been no clinical trials specifically designed to address the safety of TCA, safety assessments were among the study procedures in several clinical trials and reports of adverse reactions have included burning, pain, erythema, hyperpigmentation, and hypopigmentation. More serious adverse reactions reported were ulcerations, scarring, and pustules. Adverse events were reported more frequently with higher concentrations. Several studies indicate that TCA may be effective as a chemical peel for the treatment of acne (Ref. 7) and melasma (Ref. 8), but there is a lack of evidence comparing TCA to FDA-approved drug products for those uses. TCA has been used, in the United States and worldwide, for dermatologic conditions for over 40 years and for at least 20 years in pharmacy compounding.

On balance, the physical and chemical characterization, safety, effectiveness, and historical and current use of TCA weigh in favor of including this substance on the 503B Bulks List. No commenters disagreed with FDA's proposal to include TCA on the 503B Bulks List. Accordingly, we are adding TCA to the 503B Bulks List for topical use only.

B. Substances Evaluated and Not Included on the 503B Bulks List

Because the substances in this section are components of FDA-approved drug products, FDA considered one or both of the following questions: (1) Is there a basis to conclude that an attribute of each FDA-approved drug product containing the bulk drug substance makes each one medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation, and the drug product proposed to be compounded is intended to address that attribute and (2) is there a basis to conclude that the drug product proposed to be compounded must be compounded using a bulk drug substance.

The eight bulk drug substances that FDA has evaluated, proposed not to include on the 503B Bulks List in a **Federal Register** notice, and has now decided not to place on the 503B Bulks List are: Diazepam, dipyridamole, dobutamine HCl, dopamine HCl, edetate calcium disodium, folic acid, glycopyrrolate, and sodium thiosulfate (except for topical administration).

1. Diazepam

Diazepam was nominated for inclusion on the 503B Bulks List to compound drug products that are used for alcohol withdrawal syndrome, anxiety, and as premedication before surgery, endoscopic procedures, and cardioversion, among other conditions.[23] The proposed route of administration is intravenous or intramuscular, the proposed dosage form is a preserved solution, and the proposed concentration is 5 milligrams per milliliter (mg/mL). The nominators propose to compound a preserved solution. However, they fail to acknowledge that there is an FDA-approved formulation of diazepam that is preserved and do not explain why that formulation would be medically unsuitable for certain patients. The nominations state that diazepam might also be used to compound other drug products, but do not identify those products. The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* ANDA 072079). FDA-approved diazepam is available as a preserved 10 mg/2 mL (5 mg/mL) and 50 mg/10 mL (5 mg/mL) solution for intravenous or intramuscular administration.[24] [25] [26]

a. Suitability of FDA-Approved Drug Product(s)

The nominations do not explain why an attribute of each of the FDA-approved preserved 5 mg/mL solution products is medically unsuitable for certain patients or identify an attribute of the approved drug products that the proposed compounded drug product (also a preserved 5 mg/mL solution) is intended to address.

Two commenters agreed with FDA's proposal not to include diazepam on the 503B Bulks List. Several commenters objected generally to FDA's proposals in the July 2020 notice and these overarching concerns are addressed in section IV. No new information supporting the clinical need for compounding from the bulk drug substance diazepam was provided by the commenters.

Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nominations do not identify specific differences between drug products that would be compounded using diazepam and approved drug products containing diazepam, and no further information was supplied on this point during the comment period. Therefore, FDA finds no basis to conclude that the drug product proposed to be compounded must be prepared using a bulk drug substance.

2. Dipyridamole

Dipyridamole was nominated for inclusion on the 503B Bulks List to compound drug products that are used for thallium myocardial perfusion imaging for the evaluation of coronary artery disease in patients who cannot exercise adequately.[27] The proposed route of administration is intravenous, the proposed dosage form is an injection, and the proposed strength is 1 milligram per milliliter (mg/mL) in a 50 mL and 60 mL syringe. The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* ANDAs 074521 and 074939). FDA-approved dipyridamole is available as a 5 mg/mL injection for intravenous administration.[28] [29] Per its labeling, it should be diluted to a final concentration of less than or equal to 2.5 mg/mL.[30]

[23] See Docket No. FDA–2013–N–1524, document nos. FDA–2013–N–1524–2292 and FDA–2013–N–1524–2298.

[24] See, *e.g.,* ANDA 072079 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/4e800d0d-2181-49b1-a2c8-4c6c49edd83a/4e800d0d-2181-49b1-a2c8-4c6c49edd83a.xml.*

[25] Per the label for ANDA 072079, each mL contains 5 mg diazepam, 40 percent propylene glycol, 10 percent alcohol, 5 percent sodium benzoate and benzoic acid added as buffers, and 1.5 percent benzyl alcohol added as a preservative.

[26] Diazepam is also approved as an oral tablet, oral concentrate, oral solution, and rectal gel.

[27] See Docket No. FDA–2015–N–3469, document no. FDA–2015–N–3469–0031.

[28] See, *e.g.,* ANDA 074521 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/baa2cb6d-2b97-4ad3-a5fc-bad3b8bc6175/baa2cb6d-2b97-4ad3-a5fc-bad3b8bc6175.xml.*

[29] Dipyridamole is also approved as an oral tablet and in combination with aspirin as an extended release capsule.

[30] According to the label for ANDA 074521, dipyridamole injection should be diluted in at least a 1:2 ratio with sodium chloride injection 0.45%, sodium chloride injection 0.9% or dextrose injection 5% for a total volume of approximately 20 to 50 mL.

a. Suitability of FDA-Approved Drug Product

The nomination does not identify an attribute of the FDA-approved drug products that makes them medically unsuitable to treat certain patients and that the proposed compounded drug products are intended to address. Specifically, the nomination does not explain why the 5 mg/mL injection (for dilution) is medically unsuitable for certain patients.

Several commenters agreed with FDA's proposal not to include dipyridamole on the 503B Bulks List. One commenter objected generally to FDA's proposals in the September 2019 notice asserting that FDA was inappropriately engaging in the practice of medicine. This overarching concern is addressed in section IV. No new information supporting the clinical need for compounding from the bulk drug substance dipyridamole was provided by commenters. Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nomination does not take the position or provide support for the position that drug products containing dipyridamole must be compounded from bulk drug substances rather than by diluting the approved drug product, and no further information was supplied on this point during the comment period. Therefore, FDA finds no basis to conclude that the dipyridamole drug products proposed in the nominations must be compounded using a bulk drug substance rather than an approved drug product.

3. Dobutamine HCl

Dobutamine HCl was nominated for inclusion on the 503B Bulks List to compound drug products for ionotropic support in the short-term treatment of adults with cardiac decompensation due to depressed contractility resulting either from organic heart disease or from cardiac surgical procedures.[31] The proposed route of administration is intravenous, the proposed dosage form is an injection, and the proposed concentrations are 1 mg/mL, 2 mg/mL, and 4 mg/mL in various volumes of intravenous infusions (large volume parenterals). The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* ANDA 074086 and NDA 020201). FDA has approved dobutamine HCl drug products as equivalent (EQ) 50 mg base/100 mL (EQ 0.5 mg base/mL), EQ 100 mg base/100 mL (EQ 1 mg base/mL), EQ 200 mg base/100 mL (EQ 2 mg base/mL), and EQ 400 mg base/100 mL (EQ 4 mg base/mL) ready-to-administer forms (no further dilution needed) for intravenous administration and as an EQ 12.5mg base/mL single-dose vial that must be diluted prior to infusion.[32] [33]

a. Suitability of FDA-Approved Drug Product(s)

The nomination does not explain why an attribute of each of the FDA-approved EQ 12.5 mg base/mL solution for dilution for intravenous administration products and each of the approved EQ 1 mg base/mL, EQ 2 mg base/mL, and EQ 4 mg base/mL ready-to-administer forms is medically unsuitable for certain patients, or identify an attribute of the approved drug products that the proposed compounded drug products are intended to address.

Two commenters agreed with FDA's proposal not to include dobutamine HCl on the 503B Bulks List. Several commenters objected generally to FDA's proposals in the July 2020 notice and these overarching concerns are addressed in section IV. No new information supporting the clinical need for compounding from the bulk drug substance dobutamine HCl was provided by the commenters.

Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nomination does not identify specific differences between drug products that would be compounded using dobutamine HCl and approved drug products containing dobutamine HCl, and no further information was supplied on this point during the comment period. Therefore, FDA finds no basis to conclude that the drug product proposed to be compounded must be prepared using a bulk drug substance.

4. Dopamine HCl

Dopamine HCl has been nominated for inclusion on the 503B Bulks List to compound drug products that treat cardiogenic shock, congestive heart failure, decreased cardiac output, and renal failure, among other conditions.[34] The proposed route of administration is intravenous, the proposed dosage form is a preservative-free solution, and the proposed concentration is 80 mg/mL. The nominators proposed to compound a preservative-free solution. However, they did not acknowledge that there is a preservative-free formulation of dopamine HCl available that is FDA-approved or explain why that formulation would be medically unsuitable for certain patients. The nominations state that dopamine HCl might also be used to compound other drug products, but do not identify those products. The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* ANDA 207707). FDA-approved dopamine HCl is available as a single-dose, preservative-free 40 mg/mL or 80 mg/mL solution for intravenous administration.[35] [36]

a. Suitability of FDA-Approved Drug Product(s)

The nominations do not explain why an attribute of each of the FDA-approved preservative-free 80 mg/mL solution products is medically unsuitable for certain patients or identify an attribute of the approved drug products that the proposed compounded drug products are intended to address.

Two commenters agreed with FDA's proposal not to include dopamine HCl on the 503B Bulks List. Several commenters objected generally to FDA's proposals in the July 2020 notice and these overarching concerns are

[31] See Docket No. FDA–2015–N–3469, document no. FDA–2015–N–3469–0032.

[32] See, *e.g.,* ANDA 074086 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/7b9ea626-7073-2e77-e053-2a91aa0a9215/7b9ea626-7073-2e77-e053-2a91aa0a9215.xml.*

[33] See, *e.g.,* NDA 020201 (ready-to-use version) labeling available as the date of this notice at *https://www.accessdata.fda.gov/spl/data/d1873a74-56e6-4a01-8e4d-875789e5e344/d1873a74-56e6-4a01-8e4d-875789e5e344.xml.*

[34] See Docket No. FDA–2013–N–1524, document nos. FDA–2013–N–1524–2292 and FDA–2013–N–1524–2298.

[35] See, *e.g.,* ANDA 207707 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/d2927591-5fe5-4704-9091-82ab08bb792b/d2927591-5fe5-4704-9091-82ab08bb792b.xml.*

[36] According to the label for ANDA 207707, each mL contains metabisulfite 9 mg added as an antioxidant, citric acid, anhydrous 10 mg, sodium citrate, and dihydrate 5 mg added as a buffer. May contain additional citric acid and/or sodium citrate for pH adjustment.

addressed in section IV. No new information supporting the clinical need for compounding from the bulk drug substance dopamine HCl was provided by the commenters.

Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nominations do not identify specific differences between drug products that would be compounded using dopamine HCl and approved drug products containing dopamine HCl, and no further information was supplied on this point during the comment period. Therefore, FDA finds no basis to conclude that the drug product proposed to be compounded must be prepared using a bulk drug substance.

5. Edetate Calcium Disodium

Edetate calcium disodium dihydrate was nominated for inclusion on the 503B Bulks List to compound drug products that treat cardiovascular disease, diabetes, hypercholesterolemia, arthritis, cancer, and chronic renal failure, among other conditions.[37] The proposed route of administration is slow intravenous, the proposed dosage form is a preservative-free injection, and the proposed concentration is 200 mg/mL. The nominators proposed to compound a preservative-free solution. However, they did not acknowledge that there is a preservative-free formulation of edetate calcium disodium available that is FDA-approved or explain why that formulation would be medically unsuitable for certain patients. The nominated bulk drug substance is a component of an FDA-approved drug product (NDA 008922).[38] FDA-approved edetate calcium disodium is available as a preservative-free 200 mg/mL injection for intravenous and intramuscular administration.[39] [40]

a. Suitability of FDA-Approved Drug Product(s)

The nominations do not explain why an attribute of the FDA-approved preservative-free 200 mg/mL injection is medically unsuitable for certain patients or identify an attribute of the approved drug product that the proposed compounded drug product is intended to address.

Several commenters on FDA's proposal not to include edetate calcium disodium on the 503B Bulks List assert that there is a clinical need for a compounded drug product containing edetate calcium disodium for intravenous administration for heavy metal chelation and conditions including coronary artery disease, neuropathy, and memory loss. However, the commenters do not explain why an attribute of the FDA-approved product is medically unsuitable for certain patients or identify an attribute of the approved drug product that the proposed compounded drug product is intended to address.

Several commenters also claimed that FDA erroneously stated that edetate calcium disodium was available as an FDA-approved product in the July 2020 notice when the product was discontinued and is not available in manufactured form. FDA disagrees with these comments. FDA correctly identified the nominated bulk drug substance as a component of an FDA-approved drug product (NDA 008922), which is a preservative-free 200 mg/mL injection for intravenous and intramuscular administration.[41] Although a 500 mg tablet containing edetate calcium was approved under the same NDA number and was discontinued, this has no bearing on the availability of the currently marketed approved formulation for injection.[42] The fact that the 500 mg tablet is no longer marketed does not affect our evaluation of the nomination for edetate calcium disodium because there is a currently-marketed FDA-approved drug product for injection that contains edetate calcium disodium, and the nominators proposed to compound a drug product for injection. Other commenters agreed with FDA's proposal not to include edetate calcium disodium on the 503B Bulks List.

As described above, no new information supporting the clinical need for compounding from the bulk drug substance edetate calcium disodium was provided by the commenters. Taking into consideration the comments submitted and FDA's clinical need analysis, FDA finds no basis to conclude that an attribute of the approved drug product makes it medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nominations do not identify specific differences between drug products that would be compounded using edetate calcium disodium and the approved drug product containing edetate calcium disodium, and no further information was supplied on this point during the comment period. Therefore, FDA finds no basis to conclude that the drug product proposed to be compounded must be prepared using a bulk drug substance.

6. Folic Acid

Folic acid was nominated for inclusion on the 503B Bulks List to compound drug products that treat megaloblastic and macrocytic anemias.[43] The proposed routes of administration are intravenous, intramuscular, and subcutaneous, the proposed dosage forms are injection solutions, and the proposed concentration is 5 mg/mL. The nomination states that folic acid might also be used to compound other drug products but does not identify those products. The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* ANDA 089202). FDA-approved folic acid is available as a 50 mg/10 mL (5 mg/mL) solution for intravenous, intramuscular, and subcutaneous administration.[44] [45]

a. Suitability of FDA-Approved Drug Product(s)

The nomination does not explain why an attribute of each of the FDA-approved 5 mg/mL solution products for

[37] See Docket No. FDA–2013–N–1524, document nos. FDA–2013–N–1524–2302, FDA–2013–N–1524–2301, FDA–2013–N–1525–0225, FDA–2013–N–1524–2305, and FDA–2013–N–1524–2297.

[38] In the nominations, the name of the nominated substance is listed as ''edetate calcium disodium dihydrate.'' Since the nominated dosage form is an injection, ''edetate calcium disodium'' and ''edetate calcium disodium dihydrate'' result in the same entity when in solution.

[39] See NDA 008922 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/143830d7-46a5-49a3-b8b2-457a59533008/143830d7-46a5-49a3-b8b2-457a59533008.xml.*

[40] Per the label for NDA 008922, edetate calcium disodium dihydrate is available in a preservative-free ampule. Each 5 ml ampule contains 1,000 mg of edetate calcium disodium (equivalent to 200 mg/ml) in water for injection.

[41] See fn. 40.

[42] See drug products on NDA 008922 available at *https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm?event=overview.process&ApplNo=008922.*

[43] See Docket No. FDA–2013–N–1524, document no. FDA–2013–N–1524–2292.

[44] See, *e.g.,* ANDA 089202 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/d1a4f664-040d-4c6d-b137-e0a0a9e7bf26/d1a4f664-040d-4c6d-b137-e0a0a9e7bf26.xml.*

[45] Folic acid is also approved as a single-active-ingredient, oral tablet.

intravenous, intramuscular, and subcutaneous administration is medically unsuitable for certain patients or identify an attribute of the approved drug products that the proposed compounded drug product is intended to address.

Two commenters agreed with FDA's proposal not to include folic acid on the 503B Bulks List. Several commenters objected generally to FDA's proposals in the July 2020 notice and these overarching concerns are addressed in section IV. No new information supporting the clinical need for compounding from the bulk drug substance folic acid was provided by the commenters.

Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nomination does not identify specific differences between drug products that would be compounded using folic acid and approved drug products containing folic acid, and no further information was supplied on this point during the comment period. Therefore, FDA finds no basis to conclude that the drug product proposed to be compounded must be prepared using a bulk drug substance.

7. Glycopyrrolate

Glycopyrrolate bromide was nominated for inclusion on the 503B Bulks List to compound drug products that treat cardiac dysrhythmia, surgically induced or drug-induced vagal reflex, and peptic ulcer disease, among other conditions. The proposed route of administration is intravenous, the proposed dosage forms are both a preservative-free and a preserved solution, and the proposed concentration is 0.2 mg/mL. The nominators proposed to compound a preservative-free solution. However, they did not acknowledge that there is a preservative-free formulation of glycopyrrolate available that is FDA-approved or explain why that formulation would be medically unsuitable for certain patients. The nominations state that glycopyrrolate might also be used to compound other drug products, but do not identify those products. The nominated bulk drug substance is a component of FDA-approved drug products (*e.g.,* NDA 210997). FDA-approved glycopyrrolate is available as a 0.2 mg/mL in 1 mL or 2 mL preserved and preservative-free, single-dose vials for intramuscular or intravenous administration.[46] [47] [48]

a. Suitability of FDA-Approved Drug Product(s)

The nominations do not explain why an attribute of the FDA-approved 0.2 mg/mL preservative-free and the FDA-approved preserved solutions for intramuscular or intravenous administration are medically unsuitable for certain patients or identify an attribute of the approved drug products that the proposed compounded drug products are intended to address. Two commenters agreed with FDA's proposal not to include glycopyrrolate on the 503B Bulks List. No new information supporting the clinical need for compounding from the bulk drug substance glycopyrrolate was provided by the commenters.

Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

The nominations do not identify specific differences between drug products that would be compounded using glycopyrrolate and approved drug products containing glycopyrrolate.

One commenter submitted arguments regarding the need for compounding from the bulk drug substance. The commenter stated that outsourcing facilities supply a substantial portion of the market for glycopyrrolate injectable products and not including glycopyrrolate on the 503B Bulks List will remove substantial volume from the market and may create a shortage for that product. In addition, the commenter stated that glycopyrrolate products compounded from bulk drug substances are ready-to-use, an attribute that is essential for a medication used in emergency situations, and are a safer alternative to commercially available drug products. The commenter also stated that the additional manipulations required to compound a drug product using the FDA-approved finished product as a starting material would be costly in both labor and time.

FDA disagrees with this comment. Regarding the comment's concern about a shortage, as noted above, section 503B(a)(2)(A) of the FD&C Act allows compounding from bulk drug substances if the drug product compounded from such bulk drug substance is on the drug shortage list in effect under section 506E of the FD&C Act at the time of compounding, distribution, and dispensing. The Agency does not interpret supply issues, such as shortages and backorders, to be within the meaning of ''clinical need'' for compounding with a bulk drug substance.[49]

Regarding the concern about ready-to-use drug products, the comment does not establish that drug products, including ready-to-use products, cannot be prepared from the approved glycopyrrolate drug products. Rather, the commenter proposes to compound ready-to-use products from bulk drug substances to seek improved efficiency for prescribers or healthcare providers and to address the possibility that the approved drug might be mishandled by a medical professional; neither of which falls within the meaning of clinical need to compound a drug product using a bulk drug substance.

Regarding the concern about starting from an FDA-approved drug product, FDA does not interpret considerations of cost to be within the meaning of ''clinical need.'' Allowing outsourcing facilities to compound a drug product from a bulk drug substance that is a component of an FDA-approved drug product because of economic incentives, when the approved drug product, or a drug product compounded from the approved drug product, would be medically appropriate for the patient, would undermine the incentive for applicants to seek FDA approval of drug products.

Having considered these arguments, and because and no further information

[46] See, *e.g.,* NDA 210997 and ANDA 208973 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/6a379327-0f29-44a4-ba4f-54cb9379f854/6a379327-0f29-44a4-ba4f-54cb9379f854.xml* and *https://www.accessdata.fda.gov/spl/data/fdebc248-87d3-4afd-a5ed-592fcaddab1c/fdebc248-87d3-4afd-a5ed-592fcaddab1c.xml.*

[47] Per the label for NDA 210997, glycopyrrolate is available in a preservative-free, single-dose vial. Per the label for ANDA 208973, glycopyrrolate is available in preserved, single-dose and multiple-dose vials.

[48] Glycopyrrolate is also approved as an oral tablet, oral solution, and for inhalation as a single-active-ingredient product.

[49] See the final guidance entitled ''Evaluation of Bulk Drug Substances Nominated for Use in Compounding Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (84 FR 7390) (Ref. 2) and the March 2019 **Federal Register** notice entitled ''List of Bulk Drug Substances for Which There Is a Clinical Need Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' (84 FR 7383).

was supplied regarding the clinical need for compounding from the bulk drug substance, FDA finds no basis to conclude that the drug product proposed to be compounded must be prepared using a bulk drug substance.

8. Sodium Thiosulfate

Sodium thiosulfate was nominated for inclusion on the 503B Bulks List for the treatment of calciphylaxis, cyanide toxicity, extravasation, *Malassezia furfur,* and nephrotoxicity prophylaxis.[50] Sodium thiosulfate was nominated as a 250 mg/mL injectable, for intravenous, intradermal, intramuscular, and subcutaneous administration, and in a topical dosage form at an unknown concentration. FDA intends to address the topical route of administration in a future **Federal Register** notice because a comment provided additional support for FDA to evaluate it. FDA is not making a decision on sodium thiosulfate for topical administration at this time and compounded drug products that contain sodium thiosulfate for topical administration may be eligible for the enforcement discretion policy described in FDA's Interim Policy provided the circumstances described in the guidance are present. FDA's evaluation here addresses the clinical need for a compounded sodium thiosulfate drug product except for topical administration. The nominated bulk drug substance is a component of an FDA-approved drug product (NDA 203923). FDA-approved sodium thiosulfate is available as a 12.5 g/50 mL (250 mg/mL) solution for intravenous administration.[51] [52]

a. Suitability of FDA-Approved Drug Product(s)

As relevant to the present analysis, sodium thiosulfate was nominated for injectable (intravenous, intradermal, intramuscular, subcutaneous) administration for the treatment of calciphylaxis, cyanide toxicity, extravasation, and nephrotoxicity prophylaxis.

i. Calciphylaxis

The nominator proposes to produce an injectable compounded sodium thiosulfate drug product without potassium chloride to be used in the treatment of calciphylaxis. The nominator asserts that the safety of the approved product is of concern because the potassium level of the product is too high for patients with renal disease or impairment. This assertion is inaccurate because the amount of potassium from the approved sodium thiosulfate product (440 mg of a 25 g dose) is small relative to the amount removed in a typical dialysis session (Refs. 14 and 15).[53]

The nomination proposes to make a 250 mg/mL injectable, as well as unspecified higher concentrations. The nomination states that it may be necessary to compound a product with a greater concentration than is commercially available, but the nomination does not identify specific higher concentrations that the nominator proposes to compound or provide any data or information supporting the need for a higher concentration. In addition, FDA is not aware of patients who would need concentrations above 250 mg/mL. The approved product is available as a concentrated solution (12.5 g/50 mL). Although the product is generally diluted in normal saline before administration to minimize potential complications associated with the intravenous infusion of a hypertonic solution, it logically follows that a concentrated, compounded sodium thiosulfate product would also need to be diluted before administration for the same reason. In addition, when used for the treatment of calciphylaxis in hemodialysis patients, the product is administered during dialysis, which allows for removal of excess fluid (Refs. 9 to 11) (discussing how sodium thiosulfate is generally used to treat calciphylaxis).

Commenters on FDA's proposal not to include sodium thiosulfate on the 503B Bulks List continue to assert that there is a clinical need for potassium-free compounded sodium thiosulfate to treat calciphylaxis in hemodialysis patients. However, none of the literature pertaining to potassium referenced in the comments demonstrates that there is an attribute of the FDA-approved sodium thiosulfate drug product that makes it medically unsuitable to treat certain patients for calciphylaxis due to the presence of potassium in the approved product. None of the referenced literature pertaining to potassium provided additional justification or data to support the commenters' assertion that the amount of potassium in the approved sodium thiosulfate injectable product is clinically significant and problematic for some calciphylaxis patients receiving dialysis. We disagree that the potassium content in the approved sodium thiosulfate product poses an increased risk of hyperkalemia when used off-label for the management of calciphylaxis during hemodialysis. Patients on hemodialysis are generally permitted to take in potassium (*i.e.,* <3 g or ~70 milliequivalents (mEq/day). The amount of potassium being administered with the approved sodium thiosulfate product, *i.e.,* 440 mg of potassium chloride or ~ 6 mEq of potassium, is a fraction of the amount that the average dialysis patient is permitted per day.

Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved product makes it medically unsuitable to treat patients with calciphylaxis and that the sodium thiosulfate drug products proposed to be compounded are intended to address.[54]

ii. Cyanide Toxicity

The nomination also proposes to combine sodium thiosulfate with sodium nitroprusside to reduce the risk of cyanide toxicity during sodium nitroprusside administration. Sodium thiosulfate is FDA-approved for sequential use with sodium nitrite for treatment of acute cyanide poisoning that is judged to be serious or life-

[50] See Docket No. FDA–2015–N–3469, document no. FDA–2015–N–3469–0173.

[51] See, *e.g.,* NDA 203923 labeling available as of the date of this notice at *https://www.accessdata.fda.gov/spl/data/29449d76-f4c7-4571-b7bb-5c2a55f637b5/29449d76-f4c7-4571-b7bb-5c2a55f637b5.xml.*

[52] Sodium thiosulfate is also approved for sequential use with sodium nitrite for intravenous administration.

[53] Even in circumstances where it is not administered during dialysis, the amount of potassium in the approved product is small and potassium levels could be monitored for safety. See, *e.g.,* Ref. 9 (providing, ''The median dose of STS treatment was 25 g administered intravenously in 100 ml of normal saline given over the last half-hour of each HD session'') and Ref. 10 (studying dialysis patients on ''25 grams intravenously diluted in 100 mL of sodium chloride 0.9 percent administered over 30 to 60 minutes 3 times per week during the last hour or after the hemodialysis session.'')

[54] In making this observation, we do not suggest that the approved drug product, or products prepared from it, are approved for the use proposed by the nomination. Here we are asking a limited, threshold question to determine whether there might be clinical need for a compounded drug product, by asking what attributes of the approved drug the proposed compounded drug would change, and why. Asking this question helps ensure that if a bulk drug substance is included on the 503B Bulks List, it is to compound drugs that include a needed change to an approved drug product rather than to produce drugs without such a change. Because our answer to question 1. is ''no'', we do not evaluate the available evidence of effectiveness or lack of effectiveness of a drug product compounded with sodium thiosulfate for the treatment of calciphylaxis. We note that the references cited by the nominator appear to be general reviews of potassium homeostasis and studies in other populations showing associations between potassium excretion or potassium levels and clinical outcomes. None of these references address whether there is a risk posed by the amount of potassium in the approved product to patients receiving sodium thiosulfate for the treatment of calciphylaxis.

threatening. The nomination states that sodium thiosulfate is commonly administered with sodium nitroprusside, but the nomination does not identify the final product formulation proposed to be compounded (*e.g.,* dosage form and strength of each ingredient).[55] Sodium nitroprusside was also nominated separately (see FDA's analysis in the July 2020 notice), but that nomination does not mention the use of sodium nitroprusside in combination with sodium thiosulfate.

The nomination states that providing sodium thiosulfate and sodium nitroprusside in a combined compounded preparation would allow for faster administration in the clinical setting and fewer human manipulations, thus reducing the rate of error. We do not consider the risk that a clinician may mishandle the approved product to be an indicator of clinical need. Further, the approved labeling for sodium nitroprusside states that no other drugs should be administered in the same solution with sodium nitroprusside. The nomination has not identified any patients for whom co-administration of both approved drug products would not be medically appropriate, and for whom compounding a drug product with both active ingredients in one solution would address an unmet medical need. No new information supporting the clinical need for compounding from the bulk drug substance sodium thiosulfate to make drug products for the treatment of cyanide toxicity was provided by the commenters.

Accordingly, with respect to the combination sodium thiosulfate and sodium nitroprusside drug products proposed to be compounded, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients and that the proposed compounded drug products are intended to address.

iii. Extravasation and Nephrotoxicity Prophylaxis

The nomination does not identify an attribute of the approved products that makes them medically unsuitable for the conditions listed above and that the proposed compounded injectable drug products are intended to address. No new information supporting the clinical need for compounding from the bulk drug substance sodium thiosulfate to make drug products for these uses was provided by the commenters. Accordingly, FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients and that the proposed compounded drug products are intended to address.

b. Whether the Drug Product Must Be Compounded From a Bulk Drug Substance

Because FDA finds no basis to conclude that an attribute of the FDA-approved products makes them medically unsuitable to treat certain patients for a condition that FDA has identified for evaluation and that a proposed compounded product is intended to address, for the reasons described above, we do not consider whether there is a basis to conclude that the drug products proposed to be compounded must be prepared using a bulk drug substance rather than an FDA-approved drug product.

c. Listing Determination for Sodium Thiosulfate (Except for Topical Administration)

In addition to the comments discussed above, two other commenters agreed with FDA's proposal not to include sodium thiosulfate on the 503B Bulks List. As discussed in more detail above, the information supporting the clinical need for compounding from the bulk drug substance sodium thiosulfate to produce drug products (except for topical administration) provided by the commenters does not alter FDA's view that there is no clinical need for compounding from the bulk drug substance for these uses. FDA therefore finds that there is no clinical need for compounding from the bulk drug substance sodium thiosulfate to produce drug products (except for topical administration) under section 503B of the FD&C Act, and we have determined that it will not be placed on the 503B Bulks List. Sodium thiosulfate for topical administration only remains under consideration by the Agency at this time, and as noted above may be eligible for the enforcement discretion policy described in FDA's Interim Policy provided the circumstances described in the guidance are present.

IV. Other Issues Raised in Nominations and Comments

Two commenters expressed concern that nominations submitted before FDA issued the Clinical Need Guidance in March 2019 are disadvantaged in demonstrating clinical need because the nominators might not have fully understood FDA's thinking on clinical need when they submitted their nominations.[56] In addition, one commenter expressed concern that FDA is evaluating bulk drug substances for clinical need pursuant to a non-binding guidance document. FDA disagrees with these comments. First, as explained in section II.B, FDA is evaluating bulk drug substances nominated for inclusion on the 503B Bulks List under the ''clinical need'' standard provided by the FD&C Act as amended by the Drug Quality and Security Act in 2013.[57] The analysis under the statutory ''clinical need'' standard described in this notice is consistent with the approach described in FDA's Clinical Need Guidance. Second, the commenters fail to note the many opportunities that nominators and interested members of the public had to provide information supporting a clinical need to compound drug products containing the bulk drug substances that are the subject of this notice. As explained in section II.A, a public docket, FDA–2015–N–3469, is available for interested persons to submit nominations, including updated or revised nominations, or comments on nominated substances. Furthermore, during the comment periods for the September 2019 and July 2020 **Federal Register** notices, commenters had an additional opportunity to submit comments to the docket associated with those notices to provide additional supporting information for the bulk drug substances that are the subject of this notice, and many did so. Moreover, in response to a request from a commenter, FDA reopened the comment period on the July 2020 **Federal Register** notice for an additional 30 days to allow interested persons yet another opportunity to submit additional comments.

Three commenters on the bulk drug substances addressed in this notice assert that FDA is regulating and interfering with the practice of medicine by not placing bulk drug substances on the 503B Bulks List despite some physicians wanting to prescribe drug products compounded from those bulk drug substances. FDA disagrees with these comments. The Agency's evaluation under the clinical need standard only regulates the ability of certain compounded drug products to reach the market and is well within the

[55] While the nomination does not provide final product formulation information, it does include an article (Ref. 12), which reports on the stability of a 1:10 sodium nitroprusside: sodium thiosulfate admixture stored up to 48 hours when compounded from the approved products.

[56] See 84 FR 7383, which is available at *https://www.federalregister.gov/documents/2019/03/04/2019-03807/evaluation-of-bulk-drug-substances-nominated-for-use-in-compounding-under-section-503b-of-the.*

[57] See Public Law 113–54, § 102(a), (2013), which is available at *https://www.govinfo.gov/content/pkg/PLAW-113publ54/pdf/PLAW-113publ54.pdf.*

Agency's authorities.[58] The Agency is fulfilling its statutory mandate of regulating outsourcing facilities' production and distribution of compounded drug products, not interfering with physicians' clinical decisions regarding which drug products to prescribe. Indeed, a Federal court considered the very claim raised in these comments and determined that FDA's evaluation under the clinical need standard ''regulates the type of drug that reaches the marketplace,'' a decision that ''rests well within FDA's regulatory authority under the FDCA . . . and . . . does not intrude on the practice of medicine.'' [59]

One commenter expressed concern that FDA is promoting the off-label use of FDA-approved drug products. FDA disagrees with this comment. In performing the clinical need evaluation, FDA asks a limited, threshold question to determine whether there might be a clinical need for a compounded drug product, by asking what attributes of the approved drug product the proposed compounded drug product would change, and why. Asking this question helps ensure that if a bulk drug substance is included on the 503B Bulks List, it is to compound drug products that include a needed change to an approved drug product rather than to compound drug products without such a change. We do not suggest that the approved drug product, or products prepared from it, are approved for the use proposed by the nomination being evaluated.

One commenter expressed concern with FDA's decision to evaluate clinical need in the context of the specific drug products proposed to be compounded in the nomination. These comments stated that requiring nominators to provide information on specific drug products is unnecessary to determine whether there is a clinical need for the bulk drug substance. This commenter also asserts that FDA should not evaluate bulk drug substances in the context of finished dosage forms for drug products. FDA disagrees with these comments. As explained in section I of this notice, section 503B of the FD&C Act limits the bulk drug substances that outsourcing facilities can use in compounding to those that are used to compound drugs in shortage or that appear on a list developed by FDA of bulk drug substances for which there is a clinical need.[60] Section 503B of the FD&C Act includes this limitation, among others, to help ensure that outsourcing facilities do not grow into conventional manufacturing operations making unapproved new drug products without complying with critical requirements, such as new drug approval. Outsourcing facilities, as opposed to other compounders, may compound and distribute drug products for ''office stock'' without first receiving a prescription for an individually identified patient [61] and without conditions on interstate distribution that are applicable to other compounded drugs.[62] Because of these differences and others, section 503B of the FD&C Act places different conditions on drugs compounded by outsourcing facilities, including limitation on the outsourcing facilities' use of bulk drug substances, which are more stringent than those placed on other compounders' use of bulk drug substances.[63] The clinical need standard in section 503B of the FD&C Act requires FDA to perform a sorting function—to distinguish bulk drug substances for which there is a clinical need from those for which there is not—and this requires the FDA to apply its expertise to consider whether there is a need for the finished drug product that would be compounded from the bulk drug substance. Indeed, a Federal court considered the very claim raised in these comments and determined that ''[o]nly when 'clinical need' is assessed against the availability and suitability of an approved drug does the term perform the classifying function that Congress intended.'' In reaching this view, the court found that only when the clinical need evaluation ''considers the actual way in which the active pharmaceutical ingredient supplies a therapeutic benefit—by its administration as a finished drug product—does the inquiry produce the categorization that Congress surely envisioned'' in enacting section 503B of the FD&C Act.[64] FDA's clinical need assessments help limit patient exposure to compounded drug products that have not been demonstrated to be safe and effective to those situations in which the compounded drug product is necessary for patient treatment. In addition, FDA's assessments preserve the incentives for applicants to invest in the research and testing required to obtain FDA approval and continue to manufacture FDA-approved drug products, thereby helping to maintain a supply of high-quality, safe, and effective drugs.

Some of the bulk drug substance nominations and comments assert that there could be a benefit gained from using a bulk drug substance to compound drug products that do not require the manipulations that the approved drug products that contain these bulk drug substances require before they can be administered (*e.g.,* dilution or drawing the drug into a syringe before administration). As explained above, when a bulk drug substance is a component of an approved drug, we asked whether there

[58] See *United States* v. *Evers,* 643 F.2d 1043, 1048 (5th Cir. 1981) (''[W]hile the [FDCA] was not intended to regulate the practice of medicine, it was obviously intended to control the availability of drugs for prescribing by physicians.''); *United States* v. *Regenerative Scis., LLC,* 741 F.3d 1314, 1319–20 (DC Cir. 2014); (citing Evers and noting that the FDCA ''regulate[s] the distribution of drugs by licensed physicians''); *Gonzales* v. *Raich,* 545 U.S. 1, 28 (2005) (''the dispensing of new drugs, even when doctors approve their use must await federal approval.'').

[59] *Athenex Inc.* v. *Azar,* 397 F. Supp. 3d 56, 72 (D.D.C. 2019).

[60] Section 503B(a)(2(A)(i) and (ii) of the FD&C Act.

[61] By contrast, to qualify for the exemptions in section 503A of the FD&C Act, drug products compounded by licensed pharmacists in State-licensed pharmacies or Federal facilities, or by licensed physicians, must be compounded be based on the receipt of a valid prescription for an individually identified patient. This means that for drug products compounded under section 503A to meet the conditions of that section and qualify for the exemptions in the statute, the pharmacist or physician compounding under section 503A of the FD&C Act must compound either: (1) After receiving a valid prescription for an identified, individual patient or (2) before receiving a patient-specific prescription, in limited quantities, based on a history of receiving valid orders generated solely within the context of an established relationship with the patient or prescriber. See FDA's final guidance for industry ''Prescription Requirement Under Section 503A of the Federal Food, Drug, and Cosmetic Act'' (December 2016) (Ref. 13).

[62] For drug products compounded under section 503A of the FD&C Act to meet the conditions of that section and qualify for the exemptions in the statute, drug products must be compounded in a State; (i) that has entered into a memorandum of understanding with the Secretary which addresses the distribution of inordinate amounts of compounded drug products interstate and provides for appropriate investigation by a State agency of complaints relating to compounded drug products distributed outside such State or (ii) that has not entered into the memorandum of understanding described in clause (i) and the licensed pharmacist, licensed pharmacy, or licensed physician distributes (or causes to be distributed) compounded drug products out of the State in which they are compounded in quantities that do not exceed 5 percent of the total prescription orders dispensed or distributed by such pharmacy or physician (see section 503A(b)(3)(a)(B)(i) and (ii) of the FD&C Act).

[63] Licensed pharmacies and physicians who compound drugs under the conditions of section 503A of the FD&C Act, including the requirement to compound drugs only pursuant to a prescription for an identified individual patient, may use many bulk drug substances by operation of the statute, without action by FDA. See section 503A(b)(1)(A)(i)(I) and (II) of the FD&C Act (providing that a drug product may be compounded consistent with the exemptions in section 503A of the FD&C Act if the licensed pharmacist or licensed physician compounds the drug product using bulk drug substances that comply with the standards of an applicable USP or NF monograph, if a monograph exists, and the USP chapters on pharmacy compounding; or if such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary).

[64] *Athenex Inc.* at 65.

is a basis to conclude that an attribute of each approved drug product makes each one medically unsuitable to treat certain patients for their condition, an interpretation that protects patients and the integrity of the drug approval process. The nominations proposing to compound drug products in ready-to-use form containing bulk drug substances in one or more FDA-approved drug products do not show that the approved drug product, when not manufactured in the ready-to-use form, is medically unsuitable for certain patients. Nor do the nominations and comments establish that drug products in the relevant concentrations, including ready-to-use products, cannot be prepared from the approved drug products. Rather, they propose to compound a ready-to-use product from bulk drug substances to seek improved efficiency for prescribers or healthcare providers, or to address the possibility that the approved drug might be mishandled by a medical professional, neither of which falls within the meaning of clinical need to compound a drug product using a bulk drug substance.

Two comments requested changes to the Interim Policy. These comments are outside the scope of FDA's bulk drug substance evaluations and decisions that are the subject of this notice. FDA welcomes public comments on its guidance documents that address human drug compounding. We encourage comments on the Interim Policy to be submitted the docket for the guidance, docket number FDA–2015–D–3539. Comments may be submitted to this docket at any time on *https://www.regulations.gov.*

V. Conclusion

For the reasons stated above, we find that there is a clinical need for outsourcing facilities to compound using the bulk drug substances DPCP for topical use only, glycolic acid for topical use only in concentrations up to 70 percent, SADBE for topical use only, and TCA for topical use only and, therefore, we are now including them on the 503B Bulks List. In addition, we find that there is no clinical need for outsourcing facilities to compound using the bulk drug substances diazepam, dipyridamole, dobutamine HCl, dopamine HCl, edetate calcium disodium, folic acid, glycopyrrolate, and sodium thiosulfate (except for topical administration), and therefore we are not including these bulk drug substances on the 503B Bulks List.

VII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

*1. FDA, Guidance for Industry, ''Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act,'' January 2017 (available at *https://www.fda.gov/media/94402/download*).

*2. FDA, Guidance for Industry, ''Evaluation of Bulk Drug Substances Nominated for Use in Compounding Under Section 503B of the Federal Food, Drug, and Cosmetic Act,'' March 2019 (available at *https://www.fda.gov/media/121315/download*).

*3. FDA Memorandum to File, Clinical Need for Diphenylcyclopropenone (DPCP) in Compounding Under Section 503B of the FD&C Act, July 2020.

*4. FDA Memorandum to File, Clinical Need for Glycolic Acid in Compounding Under Section 503B of the FD&C Act, July 2020.

*5. FDA Memorandum to File, Clinical Need for Squaric Acid Dibutyl Ester (SADBE) in Compounding Under Section 503B of the FD&C Act, July 2020.

*6. FDA Memorandum to File, ''Clinical Need for Trichloroacetic Acid (TCA) in Compounding Under Section 503B of the FD&C Act,'' July 2020.

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8. Kumari, R. and D. M. Thappa, 2010, ''Comparative Study of Trichloroacetic Acid Versus Glycolic Acid Chemical Peels in the Treatment of Melasma,'' *Indian Journal of Dermatology, Venereology and Leprology,* 76:447, available at *https://ijdvl.com/comparative-study-of-trichloroacetic-acid-versus-glycolic-acid-chemical-peels-in-the-treatment-of-melasma/.*

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12. Schulz, L. T., E. J. Elder, Jr, K. J. Jones, et al., 2010, ''Stability of Sodium Nitroprusside and Sodium Thiosulfate 1:10 Intravenous Admixture,'' *Hospital Pharmacy,* 45(10):779–784.

*13. FDA Guidance for Industry, Prescription Requirement Under Section 503A of the Federal Food, Drug, and Cosmetic Act, December 2016 (available at *https://www.fda.gov/media/97347/download*).

14. Pun, Patrick H. and John P. Middleton, 2017, ''Dialysate Potassium, Dialysate Magnesium, and Hemodialysis Risk,'' *Journal of the American Society of Nephrology,* 28: 3441–3451.

15. De Nicola, L., V. Bellizzi, R. Minutolo, et al., 2000, ''Effect of Dialysate Sodium Concentration on Interdialytic Increase of Potassium,'' *Journal of the American Society of Nephrology,* 11:2337–2343.

Dated: January 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0092]

Revising Abbreviated New Drug Application Labeling Following Revision of the Reference Listed Drug Labeling; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, 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 ''Revising ANDA Labeling Following Revision of the RLD Labeling.'' This guidance provides recommendations for updating labeling for abbreviated new drug applications (ANDAs) following revisions to the labeling of a reference listed drug (RLD), including information on how to identify RLD labeling updates and how to submit labeling updates to both unapproved and approved ANDAs to conform to RLD labeling updates. This draft guidance revises the guidance for industry entitled ''Revising ANDA Labeling Following Revision of the RLD Labeling'' issued in April 2000.

DATES: Submit either electronic or written comments on the draft guidance by March 28, 2022 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–2022–D–0092 for ''Revising ANDA Labeling Following Revision of the RLD Labeling.'' 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. 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: Jonathan Hughes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1688, Silver Spring, MD 20993–0002, 301–796–9291.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Revising ANDA Labeling Following Revision of the RLD Labeling.'' This guidance provides recommendations for updating labeling for ANDAs following revisions to the labeling of an RLD, including information on how to identify RLD labeling updates and how to submit labeling updates to both unapproved and approved ANDAs to conform to RLD labeling updates. This draft guidance revises the guidance for industry ''Revising ANDA Labeling Following Revision of the RLD Labeling'' issued in April 2000. Significant changes from the 2000 version include updates to outdated details about how to obtain information on changes to RLD labeling and how to submit revised ANDA labeling to FDA.

A generic drug is required to have the same labeling as the RLD, except for changes required because of differences approved under a suitability petition (see section 505(j)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act)) (21 U.S.C. 355(j)(2)(C) and 21 CFR 314.93) or because the generic drug and the RLD are produced or distributed by different manufacturers (see *e.g.,* section 505(j)(2)(A)(v) of the FD&C Act and § 314.94(a)(8)(iv) (21 CFR 314.94(a)(8)(iv))). FDA regulations provide examples of permissible differences in labeling that may result when a proposed generic drug and the RLD are ''produced or distributed by different manufacturers,'' including the omission of an indication or other aspect of labeling protected by patent or exclusivity and ''labeling revisions made to comply with current FDA labeling guidelines or other guidance'' (§ 314.94(a)(8)(iv)).

An ANDA holder is expected to update its labeling after FDA has approved relevant changes to the labeling for the corresponding RLD. Prompt revision, submission to the Agency, and implementation of revised labeling are important to ensure that the generic drug continues to be as safe and effective as the corresponding RLD. Because the labeling of a generic drug must be the same as the labeling for the RLD, except for permissible differences, the revision should be made at the earliest time possible.

In this draft guidance, FDA is providing information on how ANDA applicants and holders should monitor for changes to RLD labeling, procedures for the electronic submission of labeling

updates, information describing the type of submission that should be made to FDA, as well as other considerations for submitting a labeling update to FDA.

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 ''Revising ANDA Labeling Following Revision of the RLD Labeling.'' 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

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA.

- The collections of information in part 314 for the submission of ANDAs (including the content and format of ANDAs and supplements and amendments) have been approved under OMB control number 0910–0001 and in part 314 (included under the 21 CFR parts 10 through 16 hearing regulations) for OMB control number 0910–0191.
- The collections of information pertaining to the electronic submission of labeling changes have been approved under OMB control number 0910–0045.
- The collections of information pertaining to the content and format requirements for human prescription drugs and biological products and the submission of such labeling have been approved under OMB control number 0910–0572.

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/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01577 Filed 1–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4337]

Prescription Drug User Fee Act of 2017; Electronic Submissions and Data Standards; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the following virtual public meeting entitled ''Prescription Drug User Fee Act of 2017; Electronic Submissions and Data Standards.'' The purpose of the virtual public meeting and the request for comments is to fulfill FDA's commitment to seek stakeholder input related to data standards and the electronic submission system's past performance, future targets, emerging industry needs, and technology initiatives. FDA will use the information from the public meeting as well as from comments submitted to the docket to provide input into data standards and electronic submissions initiatives.

DATES: The public meeting will be held on April 12, 2022, from 9 a.m. to 1 p.m. Eastern Time, and will take place virtually, held by webcast only. Submit either electronic or written comments on this public meeting by March 22, 2022. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: Registration to attend the meeting and other information can be found at *https://www.fda.gov/industry/prescription-drug-user-fee-amendments/pdufa-vi-information-technology-goals-and-progress.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 22, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 22, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–4337 for ''Prescription Drug User Fee Act of 2017; Electronic Submissions and Data Standards.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure laws. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Bryan Spells, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, *Bryan.Spells@fda.hhs.gov,* 240–402–6511; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *Stephen.Ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is committed to achieve the long-term goal of improving the predictability and consistency of the electronic submission process and enhancing transparency and accountability of FDA information technology-related activities. In the document containing the performance goals and procedures for the Prescription Drug User Fee Act (PDUFA) reauthorization for fiscal years 2018 through 2022 (the PDUFA VI commitment letter), FDA agreed to hold annual public meetings to seek stakeholder input related to electronic submissions and data standards to inform the FDA Information Technology Strategic Plan and published targets. The PDUFA VI commitment letter outlines FDA's performance goals and procedures under the PDUFA program for the years 2018 through 2022. The PDUFA VI commitment letter can be found at *https://www.fda.gov/media/99140/download.*

FDA will consider all comments made at this meeting or received through the docket (see **ADDRESSES**).

II. Participating in the Public Meeting

Registration: To register to attend ''Prescription Drug User Fee Act of 2017; Electronic Submissions and Data Standards,'' please visit the following website: *https://www.eventbrite.com/e/pdufa-vi-data-standards-public-meeting-2022-tickets-215684276477?ref=estw.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. A draft agenda will be posted approximately 1 month prior to the meeting.

Opportunity for Public Comment: Those who register online by March 22, 2022, will receive a notification about an opportunity to participate in the public comment session of the meeting. If you wish to speak during the public comment session, follow the instructions in the notification and identify which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their comments and request time jointly. All requests to make a public comment during the meeting must be received by March 22, 2022, 11:59 p.m. Eastern Time. We will determine the amount of time allotted to each commenter and the approximate time each comment is to begin, and we will select and notify participants by April 1, 2022. No commercial or promotional material will be permitted to be presented or distributed at the public meeting.

Streaming Webcast of the Public Meeting: This public meeting will be held via Zoom (*https://fda.zoomgov.com/j/1606221249*).

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *https://www.fda.gov/forindustry/userfees/prescriptiondruguserfee/ucm446608.htm.*

Dated: January 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01570 Filed 1–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6854]

Good Abbreviated New Drug Applications Submission Practices; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Good ANDA Submission Practices.'' This guidance is intended to assist applicants preparing to submit to FDA abbreviated new drug applications (ANDAs). This guidance highlights common, recurring deficiencies that may lead to a delay in the approval of an ANDA. It also makes recommendations to applicants on how to avoid these deficiencies with the goal of minimizing the number of review cycles necessary for approval. This guidance finalizes the draft guidance entitled ''Good ANDA Submission Practices'' issued on January 4, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on January 27, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6854 for ''Good ANDA Submission Practices.'' 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 this 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Mindy Ehrenfried, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1673, Silver Spring, MD 20993–0002, 301–796–4515.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Good ANDA Submission Practices.'' This guidance is intended to assist applicants preparing to submit ANDAs to FDA. It highlights common, recurring deficiencies that may lead to a delay in the approval of an ANDA. This guidance also makes recommendations to applicants on how to avoid these deficiencies so that applicants can submit ANDAs that may be approved in the first review cycle. This guidance has been developed as part of FDA's ''Drug Competition Action Plan'' (*https://www.fda.gov/drugs/guidance-compliance-regulatory-information/fda-drug-competition-action-plan*), which, in coordination with the Generic Drug User Fee Amendments (GDUFA I and II) (Pub. L. 112–144 and Pub. L. 115–52, respectively) and other FDA activities, is expected to increase competition in the market for drugs, facilitate entry of high-quality and affordable generic drugs, and improve public health.

This guidance finalizes the draft guidance of the same title issued on January 4, 2018 (83 FR 532). FDA considered comments received on the draft guidance as the guidance was finalized and made minor edits and other editorial changes to improve clarity. Revisions include clarification of the recommendations pertaining to patent and exclusivity deficiencies, as well as those pertaining to product quality deficiencies relating to the drug substance. We have also clarified the recommendations relating to ANDAs that propose to use bioequivalence methods that differ from recommendations in a relevant product-specific guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Good ANDA Submission Practices.'' 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

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov*.

Dated: January 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01580 Filed 1–26–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6752]

Information Requests and Discipline Review Letters Under Generic Drug User Fee Amendments; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Information Requests and Discipline Review Letters Under GDUFA.'' This guidance explains how FDA will issue and use an information request (IR) and/or a discipline review letter (DRL) during the assessment of an original abbreviated new drug application (ANDA) under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). This guidance finalizes the draft guidance of the same title issued on December 18, 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on January 27, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6752 for ''Information Requests and Discipline Review Letters Under GDUFA.'' 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 this 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 to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), 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 guidance document.

FOR FURTHER INFORMATION CONTACT: David Coppersmith, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1673, Silver Spring, MD 20993–0002, 301–796–9193, *david.coppersmith@fda.hhs.gov;* 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 guidance for industry entitled ''Information Requests and Discipline Review Letters Under GDUFA.''

In negotiations held as part of the Generic Drug User Fee Amendments of 2017 (GDUFA II), it was agreed that FDA will: (1) Issue an IR to request further information or clarification that is needed or would be helpful to allow completion of a discipline assessment and/or (2) issue a new type of letter for ANDAs, known as a DRL, to convey preliminary thoughts on possible deficiencies found by a discipline assessor and/or assessment team for its or their portion of the application under assessment at the conclusion of a discipline assessment.[1]

[1] FDA Reauthorization Act of 2017 (FDARA), Public Law 115–52 (2017). FDARA includes GDUFA II, and by reference, the GDUFA

Continued

This guidance explains how FDA will issue and use an IR and a DRL during the assessment of an original ANDA under section 505(j) of the FD&C Act (21 U.S.C. 355(j)), as contemplated under GDUFA II. This guidance does not apply to an amendment made in response to a Complete Response Letter, a supplement, or an amendment to a supplement.

This guidance identifies the timing of FDA's issuance of an IR or a DRL and the effect FDA's issuance of an IR or a DRL will have on the assessment clock for a given assessment cycle.

This guidance finalizes the draft guidance entitled ''Information Requests and Discipline Review Letters Under GDUFA'' issued on December 18, 2017 (82 FR 60018). FDA considered comments received on the draft guidance as the guidance was finalized. Minor changes were made from the draft to the final guidance, primarily to reflect current terminology.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Information Requests and Discipline Review Letters Under GDUFA.'' 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

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 314 for approval of abbreviated new drug applications have been approved under OMB control number 0910–0001. The collections of information that support FDA's guidance for industry on controlled correspondence related to generic drug development have been approved under OMB control number 0910–0797.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *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, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: January 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01605 Filed 1–26–22; 8:45 am]

BILLING CODE 4164–01–P

Reauthorization Performance Goals and Program Enhancements Fiscal Years 2018–2022 (GDUFA II Commitment Letter).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Research Study Section.

Date: February 28–March 2, 2022.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20852, 240–669–5199, *cerritem@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01549 Filed 1–26–22; 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 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: National Institute on Aging Special Emphasis Panel; NIA Multi-site Clinical Trial Implementation.

Date: February 22, 2022.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, DrPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *MIKHAILI@MAIL.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Improving skin wounds' healing in aging.

Date: February 24, 2022.

Time: 9:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; ADNI 4.

Date: February 25, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01597 Filed 1–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Study Section MID Research Study Section.

Date: February 15–16, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20852, (240) 669–5035, *robert.unfer@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01551 Filed 1–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploiting Genome or Epigenome Editing to Functionally Validate Genes or Variants Involved in Substance Use Disorders (R21/R33 Clinical Trial Not Allowed).

Date: February 14, 2022.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Drug Abuse/NIH, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Avenir Award Program for Genetics or Epigenetics of Substance Use Disorders (DP1 Clinical Trial Optional).

Date: February 23–24, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Device-Based Treatments for Substance Use Disorders (UG3/UH3, Clinical Trial Optional).

Date: March 2, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, 301–443–4577, *nayarp2@csr.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Centers Review.

Date: March 3, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; PrEP for HIV Prevention among Substance Using Populations (R01—Clinical Trial Optional).

Date: March 7, 2022.

Time: 10:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebekah Feng, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–7245, *rebekah.feng@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; HEAL Initiative: Novel Targets for Opioid Use Disorders and Opioid Overdose.

Date: March 8–9, 2022.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ipolia R. Ramadan, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet

Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–4471, *ramadanir@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01550 Filed 1–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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; PAR Panel: Innovative Research in Cancer Nanotechnology.

Date: February 22–23, 2022.

Time: 9:30 a.m. to 8:00 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: Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pathobiology of Alzheimer's Disease.

Date: February 22, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aleksey Gregory Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, MSC 7846, Bethesda, MD 20817, (301) 435–1042, *aleksey.kazantsev@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Child Psychopathology and Developmental Disabilities.

Date: February 22, 2022.

Time: 4:00 p.m. to 8:00 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: Karen Elizabeth Seymour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 240–762–2729, *karen.seymour@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Understanding Alzheimer's Disease.

Date: February 23, 2022.

Time: 10:00 a.m. to 7:00 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: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Epidemiological Research on Current Topics in Alzheimer's Disease and Its Related Dementias.

Date: February 23–24, 2022.

Time: 10:00 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: Lisa Tisdale Wigfall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–5622 *wigfalllt@mail.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 8:00 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: Andrew Maxwell Wolfe, Ph.D. Scientific Review Officer, Center for Scientific Review, NIH 6701 Rockledge Dr., Room 6214, Bethesda, MD 20892, 301.402.3019, *andrew.wolfe@nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Technology Development Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 8:00 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: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

Date: February 24–25, 2022.

Time: 9:30 a.m. to 7:00 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: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–GM–22–001: IDeA Regional Entrepreneurship Development (I–RED) Program (STTR) (UT2).

Date: February 25, 2022.

Time: 11:00 a.m. to 7:00 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: Marie-Jose Belanger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 6188, MSC 7804, Bethesda, MD 20892, (301) 435–1267, *belangerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Academic Industrial Partnerships for Translation of Medical Technologies.

Date: February 28–March 1, 2022.

Time: 9:00 a.m. to 8:00 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: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237–9870, *xuguofen@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: March 1–2, 2022.

Time: 9:00 a.m. to 8:00 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: Karobi Moitra, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6893, *karobi.moitra@nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: March 3–4, 2022.

Time: 9:00 a.m. to 7:00 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: Janita N. Turchi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *turchij@mail.nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Virology—A Study Section.

Date: March 3–4, 2022.

Time: 9:30 a.m. to 7:00 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: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Molecular and Cellular Causal Aspects of Alzheimer's Disease.

Date: March 3–4, 2022.

Time: 10:00 a.m. to 7:00 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: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Radiation Therapeutics and Biology Member Conflict.

Date: March 3, 2022.

Time: 12:00 p.m. to 3:30 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: Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@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: January 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01548 Filed 1–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel: NIAMS AMSC Member Conflict Review Meeting.

Date: February 22, 2022.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisol Espinoza-Pintucci, Ph.D., Scientific Program Analyst, Division of Extramural Research, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–827–6959, *marisol.espinoza-pintucci@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 21, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01594 Filed 1–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Initial Translation Efforts for Non-addictive Analgesic Therapeutics Development (HEAL U19).

Date: February 23–24, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *abhi.subedi@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B (NSD–B) Study Section.

Date: February 24, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Boulevard, Room 3205, MSC 9529, Bethesda, MD 20892, 301–496–9223, *joel.saydoff@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Leveraging Existing Data Resources for Computational Model and Tool Development to Discover Novel Candidate Mechanisms and Biomarkers for ADRD (R01 Clinical Trial Not Allowed).

Date: February 25, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *bo-shiun.chen@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.

Date: March 7, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, 6001 Executive Boulevard, Room 3208D, Rockville, MD 20852, 301–451–2854, *li.jia@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01552 Filed 1–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of 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 Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A Study Section.

Date: February 21–22, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 402–0288, *natalia.strunnikova@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 21, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01553 Filed 1–26–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0027]

Record of Vessel Foreign Repair or Equipment Purchase (CBP Form 226)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; revision 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 28, 2022) 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 1651–0027 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 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 *https://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: Record of Vessel Foreign Repair or Equipment Purchase.

OMB Number: 1651–0027.

Form Number: CBP Form 226.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: *https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase*.

Proposed Change:

This form is anticipated to be submitted electronically as part of the maritime forms automation project through the Vessel Entrance and Clearance System (VECS), which will eliminate the need for any paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data, but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Type of Information Collection: Record of Vessel Foreign Repair or Equipment Purchase.

Estimated Number of Respondents: 421.

Estimated Number of Annual Responses per Respondent: 27.

Estimated Number of Total Annual Responses: 11,788.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 23,576.

Dated: January 24, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–01626 Filed 1–26–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Arkansas: Benton, (FEMA Docket No.: B–2164).	City of Bentonville, (21–06–0311P).	The Honorable Stephanie Orman, Mayor, City of Bentonville, 305 Southwest A Street, Bentonville, AR 72712.	City Hall, 3200 Southwest Municipal Drive, Bentonville, AR 72712.	Dec. 20, 2021	050012
Colorado:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Denver, (FEMA Docket No.: B–2164).	City and County of Denver, (21–08–0407P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Room 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	Dec. 27, 2021	080046
El Paso, (FEMA Docket No.: B–2164).	City of Colorado Springs, (21–08–0112P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	Dec. 20, 2021	080060
Larimer, (FEMA Docket No.: B–2171).	Town of Johnstown, (21–08–0288P).	Mr. Matt LeCerf, Manager, Town of Johnstown, 450 South Parish Avenue, Johnstown, CO 80534.	Planning and Development Department, 450 South Parish Avenue, Johnstown, CO 80534.	Dec. 27, 2021	080250
Larimer, (FEMA Docket No.: B–2171).	Unincorporated areas of Larimer County, (21–08–0288P).	The Honorable John Kefalas, Chairman, Larimer County Board of Commissioners, 200 West Oak Street, Suite 2200, Fort Collins, CO 80521.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Dec. 27, 2021	080101
Connecticut: New Haven, (FEMA Docket No.: B–2171).	Town of Guilford, (21–01–0936P).	The Honorable Matthew T. Hoey, III, First Selectman, Town of Guilford, Board of Selectmen, 31 Park Street, Guilford, CT 06437.	Engineering Department, 50 Boston Street, Guilford, CT 06437.	Dec. 17, 2021	090077
Florida:					
Miami-Dade	City of Doral, (21–04–2105P).	The Honorable Juan Carlos Bermudez, Mayor, City of Doral, 8401 Northwest 53rd Terrace, Doral, FL 33166.	Building Department, 8401 Northwest 53rd Terrace, Doral, FL 33166.	Dec. 27, 2021	120041
Monroe	Village of Islamorada, (21–04–3944P).	The Honorable Buddy Pinder, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	Dec. 27, 2021	120424
Palm Beach, (FEMA Docket No.: B–2164).	Unincorporated areas of Palm Beach County, (20–04–4796P).	Ms. Verdenia C. Baker, Palm Beach County Administrator, 301 North Olive Avenue, 11th Floor, West Palm Beach, FL 33401.	Palm Beach County Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, FL 33411.	Dec. 20, 2021	120192
Sarasota, (FEMA Docket No.: B–2171).	Unincorporated areas of Sarasota County, (21–04–4167P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34236.	Dec. 29, 2021	125144
Georgia: Richmond, (FEMA Docket No.: B–2171).	City of Augusta, (21–04–3238X).	The Honorable Hardie Davis, Jr., Mayor, City of Augusta, 535 Telfair Street, Suite 200, Augusta, GA 30901.	Planning and Development Department, 535 Telfair Street, Suite 300, Augusta, GA 30901.	Dec. 27, 2021	130158
Louisiana:					
Jefferson, (FEMA Docket No.: B–2171).	City of Harahan, (20–06–2494P).	The Honorable Tim Baudier, Mayor, City of Harahan, 6437 Jefferson Highway, Harahan, LA 70123.	City Hall, 6437 Jefferson Highway, Harahan, LA 70123.	Dec. 29, 2021	225200
Jefferson, (FEMA Docket No.: B–2171).	Unincorporated areas of Jefferson Parish, (20–06–2494P).	The Honorable Cynthia Lee Sheng, Jefferson Parish President, 1221 Elmwood Park Boulevard, 10th Floor, Jefferson, LA 70123.	Jefferson Parish, Joseph S. Yenni Building, 1221 Elmwood Park Boulevard, Suite 310, Jefferson, LA 70123.	Dec. 29, 2021	225199
Maryland: Prince George's, (FEMA Docket No.: B–2171).	City of Laurel, (21–03–0404P).	The Honorable Craig A. Moe, Mayor, City of Laurel, 8103 Sandy Spring Road, Laurel, MD 20707.	City Hall, 8103 Sandy Spring Road, Laurel, MD 20707.	Dec. 27, 2021	240053
Massachusetts: Worcester, (FEMA Docket No.: B–2178).	Town of Holden, (20–01–1690P).	The Honorable Chiara M. Barnes, Chair, Town of Holden, Board of Selectmen, 1204 Main Street, Holden, MA 01520.	Town Hall, 1204 Main Street, Holden, MA 01520.	Jan. 3, 2022	250309
Montana: Lewis and Clark, (FEMA Docket No.: B–2171).	Unincorporated areas of Lewis and Clark County, (21–08–0279P).	The Honorable Andy Hunthausen, Chairman, Lewis and Clark County Board of Commissioners, 316 North Park Avenue, Suite 345, Helena, MT 59623.	Lewis and Clark County Municipality Building, 316 North Park Avenue, Suite 230, Helena, MT 59623.	Dec. 20, 2021	300038
New Hampshire: Rockingham, (FEMA Docket No.: B–2171).	Town of Salem, (21–01–0607P).	The Honorable Cathy A. Stacey, Chair, Town of Salem, Board of Selectmen, 33 Geremonty Drive, Salem, NH 03079.	Town Hall, 33 Geremonty Drive, Salem, NH 03079.	Jan. 3, 2022	330142
North Carolina:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Wake, (FEMA Docket No.: B–2188).	Town of Apex, (20–04–4719P).	The Honorable Jacques Gilbert, Mayor, Town of Apex, P.O. Box 250, Apex, NC 27502.	Engineering Department, 73 Hunter Street, Apex, NC 27502.	Dec. 23, 2021	370467
Wake, (FEMA Docket No.: B–2188).	Town of Cary, (20–04–4719P).	The Honorable Harold Weinbrecht, Mayor, Town of Cary, P.O. Box 8005, Cary, NC 27512.	Stormwater Services Division, 316 North Academy Street, Cary, NC 27513.	Dec. 23, 2021	370238
Wake, (FEMA Docket No.: B–2188).	Unincorporated areas of Wake County, (20–04–4719P).	The Honorable Sig Hutchinson, Chairman, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental, Services Department, 336 Fayetteville Street, Raleigh, NC 27601.	Dec. 23, 2021	370368
Oklahoma: Washington, (FEMA Docket No.: B–2164).	City of Bartlesville, (21–06–1105P).	The Honorable Dale Copeland, Mayor, City of Bartlesville, 401 South Johnstone Avenue, Bartlesville, OK 74003.	City Hall, 401 South Johnstone Avenue, Bartlesville, OK 74003.	Dec. 20, 2021	400220
Pennsylvania: Philadelphia, (FEMA Docket No.: B–2164).	City of Philadelphia, (21–03–0270P).	The Honorable James Kenney, Mayor, City of Philadelphia, 1400 John F. Kennedy Boulevard, Room 215, Philadelphia, PA 19107.	Department of Licenses and Inspections, 1400 John F. Kennedy Boulevard, Room 215, Philadelphia, PA 19107.	Dec. 23, 2021	420757
Texas:					
Clay, (FEMA Docket No.: B–2171).	City of Henrietta, (20–06–3454P).	The Honorable Roy Boswell, Mayor, City of Henrietta, 101 North Main Street, Henrietta, TX 76365.	City Hall, 101 North Main Street, Henrietta, TX 76365.	Dec. 17, 2021	480126
Clay, (FEMA Docket No.: B–2171).	Unincorporated areas of Clay County, (20–06–3454P).	The Honorable Mike Campbell, Clay County Judge, P.O. Box 548, Henrietta, TX 76365.	County-City Municipal Building, 101 North Main Street, Henrietta, TX 76365.	Dec. 17, 2021	480742
Comal, (FEMA Docket No.: B–2171).	City of New Braunfels, (21–06–0004P).	The Honorable Rusty Brockman, Mayor, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	Dec. 27, 2021	485493
Comal, (FEMA Docket No.: B–2171).	Unincorporated areas of Comal County, (21–06–0004P).	The Honorable Sherman Krause, Comal County Judge, 100 Main Plaza, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	Dec. 27, 2021	485463
Dallas, (FEMA Docket No.: B–2178).	City of Garland, (21–06–2234P).	The Honorable Scott LeMay, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046.	Engineering Department, 800 Main Street, Garland, TX 75040.	Jan. 3, 2022	485471
Denton, (FEMA Docket No.: B–2164).	City of Corinth, (21–06–0453P).	Mr. Bob Hart, Manager, City of Corinth, 3300 Corinth Parkway, Corinth, TX 76208.	Planning and Development Department, 3300 Corinth Parkway, Corinth, TX 76208.	Dec. 20, 2021	481143
Denton, (FEMA Docket No.: B–2164).	City of Denton, (21–06–0453P).	Ms. Sara Hensley, Interim City Manager, City of Denton, 215 East McKinney Street, Suite 100, Denton, TX 76201.	Engineering Department, 901–A Texas Street, Denton, TX 76509.	Dec. 20, 2021	480194
Ellis, (FEMA Docket No.: B–2178).	City of Waxahachie (20–06–3749P).	The Honorable Doug Barnes, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75168.	Public Works and Engineering Department, 401 South Rogers Street, Waxahachie, TX 75168.	Dec. 20, 2021	480211
Harris, (FEMA Docket No.: B–2171).	Unincorporated areas of Harris County, (20–06–1514P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Dec. 20, 2021	480287
Rockwall, (FEMA Docket No.: B–2164).	City of Rockwall, (21–06–1106P).	The Honorable Kevin Fowler, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	Engineering Department, 385 South Goliad Street, Rockwall, TX 75087.	Dec. 20, 2021	480547

[FR Doc. 2022–01619 Filed 1–26–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2205]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Peoria (21–09–1679P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2022	040050
Maricopa	City of Phoenix (21–09–0190P).	The Honorable Kate Gallego, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2022	040051
Maricopa	Unincorporated Areas of Maricopa County (21–09–0190P).	The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2022	040037

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Maricopa	Unincorporated Areas of Maricopa County (21–09–1679P).	The Honorable Jack Sellers, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2022	040037
Yavapai	Town of Dewey-Humboldt (21–09–0533P).	The Honorable John Hughes, Mayor, Town of Dewey-Humboldt, 2735 South Highway 69, Suite 12, Humboldt, AZ 86329.	Town Hall, 2735 South Highway 69, Suite 12, Humboldt, AZ 86329.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 24, 2022	040061
Yavapai	Town of Prescott Valley (21–09–0533P).	The Honorable Kell Palguta, Mayor, Town of Prescott Valley, Civic Center, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 24, 2022	040121
Yavapai	Town of Prescott Valley (21–09–1015P).	The Honorable Kell Palguta, Mayor, Town of Prescott Valley, Civic Center, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 6, 2022	040121
Illinois:						
Cook	City of Country Club Hills (21–05–1457P).	The Honorable James W. Ford, Mayor, City of Country Club Hills, 4200 West 183rd Street, Country Club Hills, IL 60478.	City Hall, 4200 West 183rd Street, Country Club Hills, IL 60478.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2022	170078
Cook	City of Palos Heights (21-05-3445P).	The Honorable Robert Straz, Mayor, City of Palos Heights, 7607 West College Drive, Palos Heights, IL 60463.	City Hall, 7607 West College Drive, Palos Heights, IL 60463.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2022	170142
Cook	Unincorporated Areas of Cook County (21-05-3445P).	The Honorable Toni Preckwinkle, President, Cook County Board, 118 North Clark Street, Room 537, Chicago, IL 60602.	Cook County Building and Zoning Department, 69 West Washington, 28th Floor, Chicago, IL 60602.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 11, 2022	170054
Kansas:						
Johnson	City of Lenexa (21–07–0238P).	The Honorable Michael Boehm, Mayor, City of Lenexa, 17101 West 87th Street Parkway, Lenexa, KS 66219.	City Hall, 12350 West 87th Street Parkway, Lenexa, KS 66215.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 13, 2022	200168
New York:						
Erie	Town of Lancaster (2–02–1556P).	Mr. Ronald Ruffino, Sr., Supervisor, Town of Lancaster, 21 Central Avenue, Lancaster, NY 14086.	Town Hall, 21 Central Avenue, Lancaster, NY 14086.	*https://msc.fema.gov/portal/advanceSearch.*	May 17, 2022	360249
Onondaga	Town of Lysander (21–02–0578P).	Mr. Robert A. Wicks, Supervisor, Town of Lysander, 8220 Loop Road, Baldwinsville, NY 13027.	Town Hall, 8220 Loop Road, Baldwinsville, NY 13027.	*https://msc.fema.gov/portal/advanceSearch.*	May 3, 2022	360583
Westchester	Village of Mamaroneck (21–02–0550P).	The Honorable Thomas A. Murphy, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	Building Inspector, The Regatta Building, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 20, 2022	360916
Texas:						
Tarrant	City of Arlington (21–06–0854P).	The Honorable Jim Ross, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	485454
Tarrant	City of Fort Worth (21–06–0854P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76012.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2022	480596
Wisconsin:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Dane	City of Madison (21–05–2552P).	The Honorable Satya Rhodes-Conway, Mayor, City of Madison, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	City Hall, 210 Martin Luther King Jr. Boulevard, Room 403, Madison, WI 53703.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 12, 2022	550083

[FR Doc. 2022–01620 Filed 1–26–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama:					
Lee (FEMA Docket No.: B–2175).	City of Opelika (21–04–1315P).	The Honorable Gary Fuller, Mayor, City of Opelika, P.O. Box 390, Opelika, AL 36803.	Department of Public Works, 700 Fox Trail, Opelika, AL 36803.	Dec. 22, 2021	010145
Mobile (FEMA Docket No.: B–2175).	City of Mobile (21–04–1400P).	The Honorable William Stimpson, Mayor, City of Mobile, P.O. Box 1827, Mobile, AL 36633.	Mobile City Clerk's Office, 205 Government Street, Mobile, AL 36602.	Dec. 30, 2021	015007
Morgan (FEMA Docket No.: B–2175).	Town of Priceville (20–04–3422P).	The Honorable Sam Heflin, Mayor, Town of Priceville, 242 Marco Drive, Priceville, AL 35603.	Morgan County Engineer's Office, 580 Shull Road, Hartselle, AL 35640.	Dec. 30, 2021	010448

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Morgan (FEMA Docket No.: B–2175).	Unincorporated areas of Morgan County (20–04–3422P).	The Honorable Ray Long, Chairman, Morgan County Commission, 302 Lee Street Northeast, Decatur, AL 35601.	Morgan County Engineer's Office, 580 Shull Road, Hartselle, AL 35640.	Dec. 30, 2021	010175
Colorado: Denver (FEMA Docket No.: B–2161).	City and County of Denver (21–08–0769X).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 Bannock Street, Room 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	Dec. 3, 2021	080046
Delaware: Sussex (FEMA Docket No.: B–2164).	City of Rehoboth Beach (21–03–0968P).	The Honorable Stan Mills, Mayor, City of Rehoboth Beach, 229 Rehoboth Avenue, Rehoboth Beach, DE 19971.	Building and Licensing Department, 229 Rehoboth Avenue, Rehoboth Beach, DE 19971.	Dec. 13, 2021	105086
Florida:					
Alachua (FEMA Docket No.: B–2161).	City of Gainesville (21–04–1261P).	The Honorable Lauren Poe, Mayor, City of Gainesville, 200 East University Avenue, Gainesville, FL 32601.	City Hall, 200 East University Avenue, Gainesville, FL 32601.	Dec. 1, 2021	125107
Alachua (FEMA Docket No.: B–2161).	Unincorporated areas of Alachua County (21–04–1261P).	Ms. Michele L. Lieberman, Manager, Alachua County, 12 South East 1st Street, Gainesville, FL 32601.	Alachua County Public Works Department, 5620 Northwest 120th Lane, Gainesville, FL 32653.	Dec. 1, 2021	120001
Hillsborough (FEMA Docket No.: B–2161).	Unincorporated areas of Hillsborough County (21–04–0492P).	Ms. Bonnie Wise, Hillsborough County Administrator, 601 East Kennedy Boulevard, 26th Floor, Tampa, FL 33602.	Hillsborough Public Works Department, 601 East Kennedy Boulevard, 22nd Floor, Tampa, FL 33602.	Dec. 2, 2021	120112
Pasco (FEMA Docket No.: B–2164).	City of Zephyrhills (20–04–6053P).	The Honorable Gene Whitfield, Mayor, City of Zephyrhills, 5335 8th Street, Zephyrhills, FL 33542.	City Hall, 5335 8th Street, Zephyrhills, FL 33542.	Dec. 16, 2021	120235
Polk (FEMA Docket No.: B–2161).	Unincorporated areas of Polk County (21–04–3382P).	Mr. Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33830.	Polk County Floodplain Department, 330 West Church Street, Bartow, FL 33830.	Dec. 9, 2021	120261
Sarasota (FEMA Docket No.: B–2164).	Unincorporated areas of Sarasota County (21–04–3579P).	The Honorable Alan Maio, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Dec. 13, 2021	125144
Sumter (FEMA Docket No.: B–2164).	City of Wildwood (20–04–3810P).	Mr. Jason F. McHugh, Manager, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	City Hall, 100 North Main Street, Wildwood, FL 34785.	Dec. 10, 2021	120299
Sumter (FEMA Docket No.: B–2164).	City of Wildwood (21–04–1158P).	Mr. Jason F. McHugh, Manager, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	City Hall, 100 North Main Street, Wildwood, FL 34785.	Dec. 10, 2021	120299
Sumter (FEMA Docket No.: B–2164).	Unincorporated areas of Sumter County (20–04–3810P).	The Honorable Garry Breeden, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	Sumter County Service Center, 7375 Powell Road, Wildwood, FL 34785.	Dec. 10, 2021	120296
Sumter (FEMA Docket No.: B–2164).	Unincorporated areas of Sumter County (21–04–1158P).	The Honorable Garry Breeden, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	Sumter County Service Center, 7375 Powell Road, Wildwood, FL 34785.	Dec. 10, 2021	120296
Massachusetts:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Bristol (FEMA Docket No.: B–2161).	Town of Dartmouth (21–01–0847P).	Mr. Shawn MacInnes, Town of Dartmouth Administrator, 400 Slocum Road, Dartmouth, MA 02747.	Town Hall, 400 Slocum Road, Dartmouth, MA 02747.	Dec. 2, 2021	250051
Middlesex (FEMA Docket No.: B–2161).	City of Waltham (20–01–1644P).	The Honorable Jeannette A. McCarthy, Mayor, City of Waltham, 610 Main Street, 2nd Floor, Waltham, MA 02452.	City Hall, 610 Main Street, Waltham, MA 02452.	Dec. 3, 2021	250222
Middlesex (FEMA Docket No.: B–2161).	Town of Belmont (20–01–1644P).	The Honorable Adam Dash, Chairman, Town of Belmont Select Board, 455 Concord Avenue, 2nd Floor, Belmont, MA 02478.	Community Development Department, 19 Moore Street, Belmont, MA 02478.	Dec. 3, 2021	250182
North Dakota:					
Cass (FEMA Docket No.: B–2171).	City of Harwood (21–08–0691X).	The Honorable Blake Hankey, Mayor, City of Harwood, 108 Main Street, Harwood, ND 58042.	City Hall, 108 Main Street, Harwood, ND 58042.	Dec. 2, 2021	380338
Pennsylvania:					
Cumberland (FEMA Docket No.: B–2161).	Borough of Mechanicsburg (21–03–0690P).	The Honorable Jack Ritter, Mayor, Borough of Mechanicsburg, 36 West Allen Street, Mechanicsburg, PA 17055.	Borough Hall, 36 West Allen Street, Mechanicsburg, PA 17055.	Dec. 3, 2021	420362
Cumberland (FEMA Docket No.: B–2161).	Township of Upper Allen (21–03–0690P).	The Honorable Kenneth M. Martin, President, Township of Upper Allen Board of Commissioners, 100 Gettysburg Pike, Mechanicsburg, PA 17055.	Township Hall, 100 Gettysburg Pike, Mechanicsburg, PA 17055.	Dec. 3, 2021	420372
Texas:					
Angelina (FEMA Docket No.: B–2161).	City of Lufkin (20–06–3596P).	The Honorable Mark Hicks, Mayor, City of Lufkin, 300 East Shepherd Avenue, Lufkin, TX 75901.	Engineering Services Department, 300 East Shepherd Avenue, Lufkin, TX 75901.	Dec. 9, 2021	480009
Denton and Tarrant (FEMA Docket No.: B–2171).	City of Fort Worth (21–06–1349P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Dec. 3, 2021	480596
Denton (FEMA Docket No.: B–2161).	City of Lewisville (21–06–1150P).	The Honorable T.J. Gilmore, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029.	Engineering Department, 151 West Church Street, Lewisville, TX 75057.	Dec. 13, 2021	480195
Harris (FEMA Docket No.: B–2171).	Unincorporated areas of Harris County (21–06–0685P).	The Honorable Lina Hidalgo, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Dec. 13, 2021	480287
Tarrant (FEMA Docket No.: B–2171).	City of Arlington (20–06–3516P).	The Honorable Jim Ross, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	Public Works and Transportation Department, 101 West Abram Street, Arlington, TX 76010.	Dec. 3, 2021	485454
Tarrant (FEMA Docket No.: B–2171).	City of Fort Worth (20–06–3516P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Transportation and Public Works Department, Engineering Vault, 200 Texas Street, Fort Worth, TX 76102.	Dec. 3, 2021	480596
Virginia:					
Fairfax (FEMA Docket No.: B–2164).	City of Alexandria (21–03–0303P).	The Honorable Justin M. Wilson, Mayor, City of Alexandria, 301 King Street, Room 2300, Alexandria, VA 22314.	City Hall, 301 King Street, Room 4200, Alexandria, VA 22314.	Dec. 13, 2021	515519

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Fairfax (FEMA Docket No.: B–2164).	Unincorporated areas of Fairfax County (21–03–0303P).	The Honorable Jeffrey C. McKay, Chairman At-Large, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Suite 530, Fairfax, VA 22035.	Fairfax County Department of Public Works and Environmental Services, 12000 Government Center Parkway, Fairfax, VA 22035.	Dec. 13, 2021	515525
Independence City (FEMA Docket No.: B–2164).	City of Lynchburg (21–03–0004P).	Mr. Reid A. Wodicka, Interim Manager, City of Lynchburg, 900 Church Street, Lynchburg, VA 24504.	City Hall, 900 Church Street, Lynchburg, VA 24504.	Dec. 13, 2021	510093

[FR Doc. 2022–01618 Filed 1–26–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of May 17, 2022 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Ford County, Illinois and Incorporated Areas Docket No.: FEMA–B–2105	
City of Gibson City	City Hall, 101 East 8th Street, Gibson City, IL 60936.
Unincorporated Areas of Ford County	Ford County Courthouse, 200 West State Street, Paxton, IL 60957.
Osage County, Kansas and Incorporated Areas Docket No.: FEMA–B–2068	
City of Burlingame	City Hall, 101 East Santa Fe Avenue, Burlingame, KS 66413.
City of Carbondale	City Offices, 234 Main Street, Carbondale, KS 66414.
City of Lyndon	City Hall, 730 Topeka Avenue, Lyndon, KS 66451.
City of Melvern	City Hall, 141 Southwest Main Street, Melvern, KS 66510.
City of Osage City	City Hall, 201 South 5th Street, Osage City, KS 66523.
City of Overbrook	City Hall, 401 Maple Street, Overbrook, KS 66524.
City of Quenemo	City Hall, 109 East Maple Street, Quenemo, KS 66528.
City of Scranton	Municipal Building, 120 West Boone Street, Scranton, KS 66537.

Community	Community map repository address
Unincorporated Areas of Osage County	Osage County Courthouse, 717 Topeka Avenue, Lyndon, KS 66451.
Wyoming County, Pennsylvania (All Jurisdictions) Docket No.: FEMA B–1921 and FEMA–B–2101	
Borough of Laceyville	Municipal Building, 342 Church Street, Laceyville, PA 18623.
Borough of Meshoppen	Municipal Building, 154 Oak Street, Meshoppen, PA 18630.
Borough of Tunkhannock	Borough Office, 126 Warren Street, Tunkhannock, PA 18657.
Township of Braintrim	Braintrim Township Municipal Building, 220 Main Street, Laceyville, PA 18623.
Township of Eaton	Eaton Township Municipal Building, 1331 Hunter Highway, Tunkhannock, PA 18657.
Township of Exeter	Exeter Township Municipal Building, 2690 Sullivans Trail, Falls, PA 18615.
Township of Falls	Municipal Building, 220 Buttermilk Road, Falls, PA 18615.
Township of Mehoopany	Municipal Building, 237 Schoolhouse Road, Mehoopany, PA 18629.
Township of Meshoppen	Municipal Building, 527 Benninger Road, Meshoppen, PA 18630.
Township of Northmoreland	Northmoreland Township Municipal Building, 15 Municipal Lane, Dallas, PA 18612.
Township of Tunkhannock	Municipal Building, 113 Tunkhannock Township Drive, Tunkhannock, PA 18657.
Township of Washington	Washington Township Municipal Building, 184 Keiserville Road, Tunkhannock, PA 18657.
Township of Windham	Windham Township Municipal Building, 149 Palen Street, Mehoopany, PA 18629.
Middlesex County, Virginia and Incorporated Areas Docket No.: FEMA–B–2017	
Unincorporated Areas of Middlesex County	Middlesex County Department of Planning, 865 General Puller Highway, Saluda, Virginia, 23149.
Orange County, Virginia and Incorporated Areas Docket No.: FEMA–B–2013	
Town of Gordonsville	Town Office, 112 South Main Street, Gordonsville, VA 22942.
Town of Orange	Town Hall, Office of Community Development and Planning, 119 Belleview Avenue, 3rd Floor, Orange, VA 22960.
Unincorporated Areas of Orange County	Orange County Planning and Development Services Department, 128 West Main Street, Orange, VA 22960.
Westmoreland County, Virginia and Incorporated Areas Docket No.: FEMA–B–2003 and B–2101	
Town of Montross	Town Hall, 15869 Kings Highway, Montross, VA 22520.
Unincorporated Areas of Westmoreland County	Westmoreland County George D. English, Sr. Memorial Building, 111 Polk Street, Montross, VA 22520.

[FR Doc. 2022–01623 Filed 1–26–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2204]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 27, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2204, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit

the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Carlton County, Minnesota and Incorporated Areas Project: 17–05–1518S Preliminary Date: May 28, 2021	
City of Barnum	City Hall, 3842 Main Street, Barnum, MN 55707.
City of Carlton	Civic Center, 310 Chestnut Avenue, Carlton, MN 55718.
City of Cloquet	City Hall, 101 14th Street, Cloquet, MN 55720.
City of Cromwell	City Office, 1272 Highway 73, Cromwell, MN 55726.
City of Moose Lake	City Hall, 412 4th Street, Moose Lake, MN 55767.
City of Scanlon	Community Center, 2801 Dewey Avenue, Scanlon, MN 55720.
City of Wright	City Office, 1426 3rd Street, Wright, MN 55798.
Fond du Lac Band of Chippewa Tribe	Tribal Administration Building, 1720 Big Lake Road, Cloquet, MN 55720.
Unincorporated Areas of Carlton County	Carlton County Courthouse, 301 Walnut Avenue, Room 103, Carlton, MN 55718.
Chesterfield County, Virginia (All Jurisdictions) Project: 16–03–2426S Preliminary Date: June 14, 2021	
Unincorporated Areas of Chesterfield County	Chesterfield County Community Development Building, 9800 Government Center Parkway, Chesterfield, VA 23832.
Fairfax County, Virginia and Incorporated Areas Project: 14–03–3327S Preliminary Date: April 30, 2021 and June 30, 2021	
Town of Clifton	Town Hall, 12641 Chapel Road, Clifton, VA 20124.
Town of Herndon	Municipal Center, 777 Lynn Street, Herndon, VA 20170.
Town of Vienna	Town Hall, 127 Center Street South, Vienna, VA 22180.
Unincorporated Areas of Fairfax County	Fairfax County Government Center, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.
Stafford County, Virginia (All Jurisdictions) Project: 18–03–0002S Preliminary Date: July 21, 2021	
Unincorporated Areas of Stafford County	Stafford County Department of Public Works, Environmental Division, 2126 Jefferson Davis Highway, Suite 203, Stafford, VA 22554.

[FR Doc. 2022–01621 Filed 1–26–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2206]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before April 27, 2022.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2206, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
La Plata County, Colorado and Incorporated Areas **Project: 20–08–0039S Preliminary Date: February 10, 2021 and October 29, 2021**	
City of Durango	City Hall, 949 East 2nd Avenue, Durango, CO 81301.
Southern Ute Indian Tribe	Southern Ute Indian Tribe Annex Building GIS Group, 116 Memorial Drive, Ignacio, CO 81137.
Town of Bayfield	Town Hall, 1199 Bayfield Parkway, Bayfield, CO 81122.
Town of Ignacio	Town Hall, 540 Goddard Avenue, Ignacio, CO 81137.
Unincorporated Areas of La Plata County	La Plata County Commissioner's Office, 1101 East 2nd Avenue, Durango, CO 81301.

[FR Doc. 2022–01622 Filed 1–26–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; New Collection: e-Request Tool

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until March 28, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2022–0001. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2022–0001.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2022–0001 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* e-Request Tool.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* None; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Respondents will use this collection of information to notify USCIS that: Their case is outside of normal processing times; they did not receive a notice; they did not receive a card or document by mail; to request an appointment accommodation; or to notify USCIS of a typographical error. USCIS will use the information provided by respondents to look up their case and determine an appropriate action in response to the inquiry.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection e-Request Tool is 569,519 and the estimated hour burden per response is 0.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 187,941 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. This is a system that allows the respondent to request an action, any costs are associated with the collection of information for which the person is requesting action.

Dated: January 21, 2022.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–01535 Filed 1–26–22; 8:45 am]
BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2021–0155; FXRS12610900000–223–FF09R24000; OMB Control Number 1018–0162]

Agency Information Collection Activities; Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to revise an existing collection of information.

DATES: Interested persons are invited to submit comments on or before March 28, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) by

one of the following methods (please reference ''1018–0162'' in the subject line of your comments):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–NWRS–2021–0155.
- *Email: Info_Coll@fws.gov.*
- *U.S. Mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA) and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed information collection request (ICR) that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to the Office of Management and Budget (OMB) to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Abstract: The authority of the Service to regulate non-Federal oil and gas operations on National Wildlife Refuge System (NWRS) lands is broadly derived from the Property Clause of the United States Constitution (Art. IV, Sec. 3), in carrying out the statutory mandates of the Secretary of the Interior, as delegated to the Service, to manage Federal lands and resources under the National Wildlife Refuge System Administration Act (NWRSAA), as amended by the National Wildlife Refuge System Improvement Act (NWRSIA; 16 U.S.C. 668dd *et seq.*), and to specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 715 *et seq.*), the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), and the Fish and Wildlife Act of 1956 (FWA; 15 U.S.C. 742f).

The Service's regulations at 50 CFR, part 29, subpart D provide for the continued exercise of non-Federal oil and gas rights while avoiding or minimizing unnecessary impacts to refuge resources and uses. Other land management agencies have regulations that address oil and gas development, including the Department of the Interior's National Park Service and Bureau of Land Management, and the U.S. Department of Agriculture's Forest Service. These agencies all require the submission of information similar to the information requested by the Service.

The collection of information is necessary for the Service to properly balance the exercise of non-Federal oil and gas rights within refuge boundaries with the Service's responsibility to protect wildlife and habitat, water quality and quantity, wildlife-dependent recreational opportunities, and the health and safety of employees and visitors on NWRS lands.

The information collected under 50 CFR, part 29, subpart D identifies the owner and operator (the owner and operator can be the same) and details how the operator may access and develop oil and gas resources. It also identifies the steps the operator intends to take to minimize any adverse impacts of operations on refuge resource and uses. No information is submitted unless the operator wishes to conduct oil and gas operations.

We use the information collected to: (1) Evaluate proposed operations, (2) ensure that all necessary mitigation measures are employed to protect refuge resources and values, and (3) ensure compliance with all applicable laws and regulations, including the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its regulations (40 CFR parts 1500–1508), the NWRSAA, as amended by the NWRSIA, and to specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the MBTA, the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the FWA.

Proposed Revisions

Automation of Application Form Via ePermits

With this submission, we are proposing to automate FWS Form 3–2469 in the Service's ''ePermits'' system, an automated permit application system that allows the agency to move towards a streamlined permitting process to reduce public burden. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish, Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of ePermits is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This system enhances the user experience by allowing users to enter data from any device that has internet access, including personal computers (PCs), tablets, and smartphones. It also links the permit applicant to pay associated permit application fees via the *Pay.gov* system.

Financial Assurances Costs

With this submission, we will seek OMB approval of the costs associated with the financial assurances requirements as they are required per regulations contained in 50 CFR 29.103(b) and 50 CFR 29.150. These are not new costs, but rather we are bringing this requirement into compliance with the PRA as an annual non-hour burden cost. These costs were inadvertently overlooked with previous submissions for this collection of information. The estimated annual non-hour cost burden associated with the required financial assurances is captured below under ''Total Estimated Annual Non-Hour Burden Cost.''

Title of Collection: Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands, 50 CFR 29, Subpart D.

OMB Control Number: 1018–0162.

Form Number: FWS Form 3–2469.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses that conduct oil and gas exploration on national wildlife refuges.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $1,100,000 (22 annual responses × $50,000 each).

Activity/requirement	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours
Application for Temporary Access and Operations Permit (§ 29.71) (FWS Form 3–2469)	17	17	289
Preexisting Operations (§ 29.61)	20	50	1,000
Accessing Oil and Gas Rights from Non-Federal Surface Location (§ 29.80)	2	1	2
Pre-application Meeting for Operations Permit (§ 29.91)	22	2	44
Operations Permit Application (§§ 29.94–29.97)	22	140	3,080
Financial Assurance (§§ 29.103(b), 29.150)	22	1	22
Identification of Wells and Related Facilities (§ 29.119(b))	22	2	44
Reporting (§ 29.121)			
Third-Party Monitor Report (§ 29.121(b))	150	17	2,550
Notification—Injuries/Mortality to Fish and Wildlife and Threatened/Endangered Plants (§ 29.121(c))	10	1	10
Notification—Accidents involving Serious Injuries/Death and Fires/Spills (§ 29.121(d))	10	1	10
Written Report—Accidents Involving Serious Injuries/Deaths and Fires/Spills (§ 29.121(d))	10	16	160
Report—Verify Compliance with Permits (§ 29.121(e))	120	4	480
Notification—Chemical Disclosure of Hydraulic Fracturing Fluids uploaded to FracFocus (§ 29.121(f))	2	1	2
Permit Modifications (§ 29.160(a))	5	16	80
Change of Operator § 29.170			
Transferring Operator Notification (§ 29.170)	10	8	80
Acquiring Operator's Requirements for Wells Not Under a Service Permit (§ 29.171(a))	9	40	360
Acquiring Operator's Acceptance of an Existing Permit (§ 29.171(b))	1	8	8
Extension to Well Plugging (§ 29.181(a))			
Application for Permit	5	140	700
Modification	2	16	32
Public Information (§ 29.210)			
Affidavit in Support of Claim of Confidentiality (§ 29.210(c) and (d))	1	1	1
Confidential Information (§ 29.210(e) and (f))	1	1	1
Maintenance of Confidential Information (§ 29.210(h))	1	1	1
Generic Chemical Name Disclosure (§ 29.210(i))	1	1	1
Totals:	465		8,957

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–01643 Filed 1–26–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2021–0151; FF09420000/223/FXES111609M0000; OMB Control Number 1018–New]

Agency Information Collection Activities; Approval Procedures for Incidental Harassment Authorizations of Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without an Office of Management and Budget control number.

DATES: Interested persons are invited to submit comments on or before March 28, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference ''1018–IHA'' in the subject line of your comments):

- *Internet (preferred): http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–ES–2021–0151.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection

Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Abstract: Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specific geographic region for periods of not more than 1 year. The Service may authorize incidental take by harassment if statutory and regulatory procedures are followed and the Service finds: (i) Take is of a small number of marine mammals of a species or stock, (ii) take will have a negligible impact on the species or stock, and (iii) take will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses by Alaska Natives.

The term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal. Harassment means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as ''Level A harassment''), or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as ''Level B harassment'').

The terms ''negligible impact,'' ''small numbers,'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.,* the Service's regulations governing small takes of marine mammals incidental to specified activities). ''Negligible impact'' is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. ''Unmitigable adverse impact'' means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers'' is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impact'' as separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc.* v. *Evans,* 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals and evaluate if that take is small relative to the size of the species or stock.

The term ''least practicable adverse impact'' is not defined in the MMPA or its enacting regulations. The Service ensures the least practicable adverse impact through mitigation measures that are effective in reducing the impact of project activities but are not so restrictive as to make project activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, the Service issues an IHA, which may set forth the following: (i) Permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting such take by harassment.

Applicants seeking to conduct activities may request an IHA for the specified activity. If the IHA is issued, the applicants must submit on-site monitoring reports and a final report of the activity to the Secretary.

This is a non-form collection. Applicants must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. These regulations provide the applicant with a detailed description of information the Service needs in order to evaluate the proposed activity and make the required determinations. Specifically, applicants must submit the following information to the Service as part of the IHA application process:

- A description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals, and
- The dates and duration of such activity and the specific geographical region where it will occur.

• Based on the best available scientific information, each applicant must also:

—Estimate the species and numbers of marine mammals likely to be taken by age, sex, and reproductive conditions, and the type of taking (*e.g.,* disturbance by sound, injury or death resulting from collision, etc.) and the number of times such taking is likely to occur;

—Describe the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks likely to be affected by such activities;

—Describe the anticipated impacts of an activity upon the species or stocks;

—Discuss the anticipated impact of the activity on the availability of the species or stocks for subsistence uses;

• Discuss the anticipated impact of the activity upon the habitat of the marine mammal populations and the likelihood of restoration of the affected habitat;

• Describe the anticipated impact of the loss or modification of the habitat on the marine mammal population involved;

• Describe availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and, where relevant, on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

• Discuss the suggested means of accomplishing the necessary monitoring and reporting which will result in increased knowledge of the species through an analysis of the level of taking or impacts, and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity; and

• Suggest means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking from such specified activities, and evaluating their effects.

The Service uses the information to draft the proposed IHA, including proposed determinations and mitigation measures to ensure the least practicable adverse impacts on the species or stock and its habitat. Upon IHA issuance, applicants must submit monitoring and final reports indicating the nature and extent of all takes of marine mammals that occurred incidentally to the specified activity. The purpose of monitoring requirements is to assess the effects of project activities on the species or stock, ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and detect any unanticipated effects on the species or stock. Because the length of project activities varies by project (a few weeks to a few months), some projects require weekly reports during project activities.

OMB previously approved information collection requirements associated with incidental take regulations (ITRs) and letters of authorization (LOAs) contained in 50 CFR 18, subparts J (Beaufort Sea) and K (Cook Inlet) under OMB Control Number 1018–0070. Because the ITRs and associated LOAs authorize specific entities to incidentally take marine mammals while engaged in specified activities within a specific geographic region for periods of not more than 5 years, the Service will request a separate OMB control number for information collection requirements associated with IHAs.

Title of Collection: Approval Procedures for Incidental Harassment Authorizations of Marine Mammals (50 CFR 18.27).

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Private sector and State/local/Tribal government.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours
Incidental Harassment Authorization—Application					
Private Sector	4	1	4	50	200
Government	1	1	1	50	50
Incidental Harassment Authorization—Monitoring and Observation Reports					
Private Sector	4	12	48	1.5	72
Government	1	12	12	1.5	18
Incidental Harassment Authorization—Final Report					
Private Sector	4	1	4	5	20
Government	1	1	1	5	5
Totals:	15		70		365

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–01593 Filed 1–26–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–926000–223–L14400000–BJ0000–LXSSK15600000; LLWY–926000–XXX–L19100000–BJ0000–LRCSKX103300; LLWY–926000–XXX–L19100000–BJ0000–LRCSKX103600]

Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file plats of survey 30 calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming. These surveys, which were executed at the request of the Bureau of Indian Affairs and U.S. Forest Service, are necessary for the management of these lands.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing by February 28, 2022.

ADDRESSES: You may submit written protests to the Wyoming State Director at WY926, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Sonja Sparks, BLM Wyoming Chief Cadastral Surveyor, by telephone at (307) 775–6225 or by email at *s75spark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact this office during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with this office. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the BLM Wyoming State Office, Cheyenne, Wyoming.

Wind River Meridian, Wyoming

T. 1 S., R. 4 E., Group No. 962, dependent resurvey and survey, accepted January 7, 2022

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 14 N., R. 86 W., Group No. 1026, dependent resurvey and survey, accepted January 7, 2022

T. 18 N., R. 80 W., Group No. 1027, dependent resurvey and survey, accepted January 7, 2022

T. 18 N., R. 81 W., Group No. 1027, dependent resurvey and survey, accepted January 7, 2022

T. 14 N., R. 87 W., Group No. 1055, supplemental plat, accepted January 7, 2022

A person or party who wishes to protest one or more plats of survey identified in this notice must file a written notice of protest within 30 calendar days from the date of this publication with the Wyoming State Director at the above address. Any notice of protest received after the scheduled date of official filing will be untimely and will not be considered. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Copies of the preceding described plat and field notes are available to the public at a cost of $4.20 per plat and $0.15 per page of field notes. Requests can be made to *blm_wy_survey_records@blm.gov* or by telephone at 307–775–6222.

(Authority: 43 U.S.C., Chapter 3).

Dated: January 7, 2022.

Sonja S. Sparks,

Chief Cadastral Surveyor of Wyoming.

[FR Doc. 2022–01571 Filed 1–26–22; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000 20XL5017AR; MO#4500159595]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), California State Office, Sacramento, California, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the General Services Administration, Department of Defense, U.S. Fish and Wildlife Service, U.S. Forest Service, and BLM, are necessary for the management of these lands.

DATES: Unless there are protests to this action, the plats described in this notice will be filed on February 28, 2022.

ADDRESSES: You may submit written protests to the BLM California State Office, Cadastral Survey, 2800 Cottage Way, W–1623, Sacramento, CA 95825. A copy of the plats may be obtained from the BLM California State Office, Public Room, 2800 Cottage Way, W–1623, Sacramento, California 95825, upon required payment.

FOR FURTHER INFORMATION CONTACT: Joan Honda, Chief, Branch of Cadastral Survey, Bureau of Land Management, California State Office, 2800 Cottage Way, W–1623, Sacramento, California 95825; (916) 978–4316; *jhonda@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at (800) 877–8339 to contact Joan Honda during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Mount Diablo Meridian, California

T. 13 S., R. 27 E., dependent resurvey and subdivision, for Group No. 1771, accepted April 7, 2021.

T. 14 S., R. 27 E., dependent resurvey and subdivision, for Group No. 1771, accepted April 12, 2021.

T. 22 S., R. 36 E., dependent resurvey and subdivision of sections, for Group No. 1334, accepted May 3, 2021.

T. 26 N., R. 7 E., dependent resurvey and subdivision, for Group No. 1729, accepted July 20, 2021.

T. 30 S., R. 41 E., supplemental plat of a portion of the NE 1/4 of section 6, accepted July 20, 2021.

Tps. 3 & 4 N., R. 5 W., meander survey and metes-and-bounds survey, for Group No. 1781, accepted September 23, 2021.

T. 25 N., R. 17 E., dependent resurvey and metes-and-bounds survey, for Group No. 1792, accepted October 26, 2021.

T. 13 S., R. 11 E., dependent resurvey, subdivision of sections, and metes-and-bounds survey, for Group No. 1793,

accepted December 8, 2021.

San Bernardino Meridian, California

T. 14 N., R. 13 E., amended plat, for Group No. 685, accepted March 8, 2021.
T. 3 S., R. 11 W., dependent resurvey and metes-and-bounds survey, for Group No. 1752, accepted March 11, 2021.
T. 5 N., R. 3 E., amended plat, for Group No. 1679, accepted October 12, 2021.

A person or party who wishes to protest one or more plats of survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. Any notice of protest received after the due date will be untimely and will not be considered. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed at the same address within 30 calendar days after the notice of protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available at any time. While you can ask the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., Chapter 3)

Joan H. Honda,

Chief Cadastral Surveyor.

[FR Doc. 2022–01633 Filed 1–26–22; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033317; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the Peabody Museum of Archaeology and Ethnology, Harvard University. If no additional requestors come forward, transfer of control of the associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology, Harvard University at the address in this notice by February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The associated funerary objects were removed from Kent County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the associated funerary objects was made by the Peabody Museum of Archaeology and Ethnology, Harvard University professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan. The following Indian Tribes were invited to consult but did not participate: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians [previously listed as Seneca Nation of New York]; Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin;

Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation. Hereinafter, all the Indian Tribes listed in this section are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Associated Funerary Objects

The human remains of two Native American individuals associated with these funerary objects were listed in a Notice of Inventory Completion published in the **Federal Register** on October 3, 2016 (81 FR 68040–68042, October 3, 2016). These human remains have been transferred to the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan.

In 1885, 16 associated funerary objects were removed from the Court Street Mount in Kent County, MI, by employees of Shiver, Weatherly & Company, while digging for a waterline under Court Street. They were collected by W. L. Coffinberry, who donated them to the Peabody Museum in the same year. The 16 associated funerary objects are six bone implements, two faunal teeth, one beetle effigy figurine, one double-barreled stone effigy pipe, one serpentine pipe, one metal pan pipe, one sheet of hammered silver, one copper nugget, and two silver nuggets.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the 16 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by February 28, 2022. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: January 19, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–01652 Filed 1–26–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033315; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Capone, Curator and NAGPRA Director, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138,

telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from the Green Farm site, Jefferson County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Oneida Indian Nation [previously listed as Oneida Nation of New York] and the Onondaga Nation. The Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin] was invited to consult but did not respond to repeated invitations. Hereafter, the Indian Tribes listed in this section are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Remains

In July of 1906, human remains representing, at minimum, one individual were removed from the Green Farm site in Jefferson County, NY, by Irwin Hayden and Mark Raymond Harrington as part of a Peabody Museum Expedition. The fragmentary postcranial remains belong to an adult of indeterminate sex and age. No known individual was identified. No associated funerary objects are present.

Museum documentation indicates that the Green Farm site is in the town of Adams Center, Jefferson County, NY, and is approximately two miles southwest of the Heath Farm site. Interments from the Green Farm site most likely date to the Late Woodland period (A.D. 1000–1600). Museum documentary and archeological evidence, which includes a ceramic pipe fragment and ceramic vessels with globular bodies, constricted, zoned-incised necks, and castellated rims recovered from the Green Farm site (but not associated with the burial) supports a Late Woodland period date for the interment.

In the Late Woodland period, Jefferson County, NY, was occupied by the so-called ''Jefferson County Iroquois'' in several distinct settlement clusters. The Green Farm site is considered part of the Dry Hill settlement cluster and is situated on a ''rounded hilltop near a brook,'' consistent with settlement patterns associated with the Jefferson County Iroquois. Ceramic types and decorations present at the site are also consistent with those found at other Dry Hill cluster sites. The Jefferson County Iroquois left their territory during the 1500s and 1600s and joined other Iroquoian groups, most notably the Onondaga Nation. Based on the archeological materials from the Green Farm site, museum documentation, and consultation information presented by the Oneida Indian Nation and the Onondaga Nation, the preponderance of the evidence indicates a relationship of shared group identity between these human remains and the Onondaga Nation.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Onondaga Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Curator and NAGPRA Director, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by February 28, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Onondaga Nation may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: January 19, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–01650 Filed 1–26–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–VRP–OPH–NPS0032219; PPWOVPADH0, PPMPRHS1Y.Y00000 (211); OMB Control Number 1024–NEW]

Agency Information Collection Activities; NPS Case and Outbreak Investigation Data Collections

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 28, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, NPS Information Collection Clearance Officer, 12201 Sunrise Valley Drive (MS 242), Reston, VA 20192; or by email at *phadrea_ponds@nps.gov.* Please reference Office of Management and Budget (OMB) Control Number 1024–NEW (EPI) in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Dr. Stefanie Campbell by email at *stefanie_campbell@nps.gov* or by telephone at 202–768–5008; or Dr. Maria Said by email at *maria_said@nps.gov*, or by telephone at 202–538–5681. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. 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.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize

the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency 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 response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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.

Abstract: Authorized by to the NPS Organic Act, 54 U.S.C. 100101 *et seq.,* and Public Health Service Act, 42 U.S. Code Chapter 6A, the NPS Office of Public Health (OPH) is called upon by National Park Service leadership and others to conduct disease surveillance, respond to urgent outbreaks, and prevent illnesses within or associated with National Parks. National Parks are federally managed lands where state and local health departments may not have jurisdiction, the public health response rests with the NPS OPH. This collection will allow the NPS OPH to conduct epidemiological investigations in response to public health events of concern, including:

- Incidents where three or more visitors, employees, or volunteers have similar symptoms or illnesses
- Single reports of rare or reportable diseases
- Incidents that result in death, cause serious injury or illness, and/or lead to overnight hospitalization
- Wildlife encounters of concern such as bites, scratches, or attacks and wildlife deaths that do not fit known patterns
- Any additional illnesses of public health concern

The information collected will be used to determine the agents, sources, modes of transmission, or risk factors so that effective prevention and control measures can be implemented.

Title of Collection: NPS Case and Outbreak Investigation Data Collections.

OMB Control Number: 1024–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals/households, businesses, and governments.

Total Estimated Number of Annual Respondents: 500.

Total Estimated Number of Annual Responses: 500.

Estimated Completion Time per Response: Average 18 minutes.

Total Estimated Number of Annual Burden Hours: 150.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

National Park Service Information Collections Clearance Officer.

[FR Doc. 2022–01630 Filed 1–26–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033316; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The associated funerary objects were removed from Alpena County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the associated funerary objects was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian

Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan. The following Indian Tribes were invited to consult but did not participate: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians [previously listed as Seneca Nation of New York]; Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation. Hereinafter all Indian Tribes listed in this section are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Associated Funerary Objects

The human remains of 32 Native American individuals associated with these funerary objects were listed in a Notice of Inventory Completion published by the Peabody Museum of Archaeology and Ethnology, Harvard University in the **Federal Register** on October 3, 2016 (81 FR 68036–68037, October 3, 2016). These human remains have been transferred to the Saginaw Chippewa Indian Tribe of Michigan.

In 1882, 247 associated funerary objects were removed from the Devil River Mound Group (Michigan State Site #20AL1) in Alpena County, MI, by Henry Gilman. They were donated by Stephen Salisbury in the same year. The 247 associated funerary objects are 240 ceramic sherds, one biface, one chipped stone tool, one lithic flake, one copper-stained bone, and three chert flakes.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the 247 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by February 28, 2022. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: January 19, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–01651 Filed 1–26–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033320; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The associated funerary objects were removed from Wayne County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan. The following Indian Tribes were invited to consult but did not participate: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians [previously listed as the Seneca Nation of New York]; Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation. Hereinafter, all the Indian Tribes listed in this section are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Associated Funerary Objects

The human remains of 27 Native American individuals associated with these funerary objects were included in a Notice of Inventory Completion published in the **Federal Register** on October 3, 2016 (81 FR 68045–68046, October 3, 2016). These human remains have been transferred to the Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.].

At an unknown date, one associated funerary object was removed from the River Rouge Mound Group in Wayne County, MI, by Henry Gilman. It was donated to the Peabody Museum by Mr. Gilman in 1869. The one associated funerary object is one lot of faunal remains.

At an unknown date, 118 associated funerary objects were removed from the River Rouge Mound Group in Wayne County, MI, by Henry Gilman. They were purchased from an unknown individual in 1872. The 118 associated funerary objects are five groundstone axes, four groundstone ornaments, nine bifaces, one uniface, one beaked edge tool, 16 projectile points, 31 lithic flakes, one drill, three shell ornaments, six bone beads, 20 copper beads, one clay pipe bowl fragment, one perforated worked antler, two beaver teeth fragments, one fox mandible, one copper awl, one bottle of red ochre, one worked bone, 11 ceramic sherds, and two ceramic vessels.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

• Pursuant to 25 U.S.C. 3001(3)(A), the 119 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the associated funerary objects and any present-day Indian Tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation (hereinafter referred to as ''The Aboriginal Land Tribes'').

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by February 28, 2022. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: January 19, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–01655 Filed 1–26–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033318; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The associated funerary objects were removed from St. Claire County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi

Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians, Michigan. The following Indian Tribes were invited to consult but did not participate: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians [previously listed as Seneca Nation of New York]; Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation. Hereinafter, all Indian Tribes listed in this section are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Associated Funerary Objects

The human remains of 19 Native American individuals associated with these funerary objects were included in a Notice of Inventory Completion published in the **Federal Register** on October 3, 2016 (81 FR 68037–68039, October 3, 2016). These human remains have been transferred to the Saginaw Chippewa Indian Tribe of Michigan.

In 1872, 17 associated funerary objects were removed from the St. Claire Mound Group in St. Claire County, MI, by Henry Gilman as a part of a Peabody Museum expedition. The 17 associated funerary objects are three bags of faunal remains, one piece of coral, two projectile points, one bag of mica plate and fragments, and 10 shell beads.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the 17 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation (hereinafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by February 28, 2022. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: January 19, 2022

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–01653 Filed 1–26–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033319; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology, Harvard University has completed an inventory of associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of associated funerary objects under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The associated funerary objects were removed from Washtenaw County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.]; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan. The following Indian Tribes were invited to consult but did not participate: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Little Shell Tribe of Chippewa Indians of Montana; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band Potawatomi Nation [previously listed as Prairie Band of Potawatomi Nation, Kansas]; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Seneca Nation of Indians [previously listed as Seneca Nation of New York]; Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma]; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation. Hereinafter, all the Indian Tribes listed in this section are referred to as ''The Consulted and Invited Tribes.''

History and Description of the Associated Funerary Objects

The human remains of one Native American individual associated with these funerary objects were listed in a Notice of Inventory Completion published in the **Federal Register** on October 3, 2016 (81 FR 68031–68032, October 3, 2016). These human remains have been transferred to the Nottawaseppi Huron Band of the Potawatomi, Michigan [previously listed as Huron Potawatomi, Inc.].

In 1900, two associated funerary objects were removed from a mound three miles east of Ann Arbor, on a bluff north of the Huron River in Washtenaw County, MI, by W.B. Hinsdale. The Peabody Museum likely purchased these funerary objects in 1908, presumably from Hinsdale. The two associated funerary objects are two ceramic sherds.

Determinations Made by the Peabody Museum of Archaeology and Ethnology, Harvard University

Officials of the Peabody Museum of Archaeology and Ethnology, Harvard University have determined that:

- Pursuant to 25 U.S.C. 3001(3)(A), the two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the associated funerary objects and any present-day Indian Tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [previously listed as Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana]; Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation (hereinafter referred to as ''The Aboriginal Land Tribes'').

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these associated funerary objects should submit a written request with information in support of the request to Patricia Capone, NAGPRA Director, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by February 28, 2022. After that date, if no additional requestors have come forward, transfer of control of the associated funerary objects to The Aboriginal Land Tribes may proceed.

The Peabody Museum of Archaeology and Ethnology, Harvard University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: January 19, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–01654 Filed 1–26–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1082–1083 (Third Review)]

Chlorinated Isocyanurates From China and Spain; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty orders on chlorinated isocyanurates from China and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: January 4, 2022.

FOR FURTHER INFORMATION CONTACT: Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On January 4, 2022, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that the domestic interested party group response and the respondent interested party group response from Spain to its notice of institution (86 FR 54473, October 1, 2021) were adequate and that the respondent interested party group response from China was inadequate.[1] A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 21, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01536 Filed 1–26–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1293]

Certain Automated Put Walls and Automated Storage and Retrieval Systems, Associated Vehicles, Associated Control Software, and Component Parts Thereof; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 22, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of OPEX Corporation of

[1] Chair Jason E. Kearns not participating.

Moorestown, New Jersey. A supplement was filed on January 10, 2022. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated put walls and automated storage and retrieval systems, associated vehicles, associated control software, and component parts thereof by reason of infringement of certain claims of U.S. Patent No. 8,104,601 (''the '601 patent''), U.S. Patent No. 8,276,740 (''the '740 patent''), U.S. Patent No. 8,622,194 (''the '194 patent''), and U.S. Patent No. 10,576,505 (''the '505 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jessica Mullan, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 21, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–28 of the '601 patent; claims 1–5 and 8–25 of the '740 patent; claims 1–10, 12–17, 19, and 20 of the '194 patent; and claims 1–5, 7–9, and 11–21 of the '505 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''automated put walls and automated storage and retrieval systems; vehicles associated with these automated put walls and automated storage and retrieval systems; control software associated with these automated put walls and automated storage and retrieval systems; and component parts of these automated put walls and automated storage and retrieval systems'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: OPEX Corporation, 305 Commerce Drive, Moorestown, NJ 08057.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

HC Robotics (a.k.a. Huicang Information Technology Co., Ltd.), 3rd Floor, Haiwei Building, No. 101 Binkang Road, Binjiang District, Hangzhou City, Zheijang Province, China

Invata, LLC (d/b/a Invata Intralogistics), 1010 Spring Mill Avenue, Suite 300, Conshohocken, PA 19428

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations is not participating as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

By order of the Commission.

Issued: January 21, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01565 Filed 1–26–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

On January 20, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of New Mexico in the multidistrict litigation entitled *In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015,* MDL no. 1:18–md–02824–WJ. The proposed Consent Decree pertains to certain claims alleged in the following actions that have been centralized in the multidistrict litigation: No. 16–cv–465–WJ/LF; No. 16–cv–931–WJ/LF; No. 18–cv–319–WJ; No. 18–cv–744–WJ.

The proposed Consent Decree resolves claims brought by the United States against Sunnyside Gold Corporation (''SGC'') and Kinross Gold Corporation (''KGC'') under Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9607(a) and 9613(g)(2), and seeking reimbursement of, or contribution towards, response costs incurred or to be incurred for response actions taken or to be taken by the United States in connection with the release or threatened release of hazardous

substances at the Bonita Peak Mining District Superfund Site located in San Juan County, Colorado (''BPMD Site''). The BPMD Site was placed on the National Priorities List on September 9, 2016. *See* 81 FR 62397, 62401 (Sept. 9, 2016). The United States alleged that SGC is liable under CERCLA as a current owner at the Site and as a past owner and operator at the time of a disposal of a hazardous substance at the Site, and that KGC is liable as the successor to Echo Bay Mines, Ltd., a past operator at the time of a disposal of a hazardous substance at the Site.

The proposed Consent Decree also resolves claims brought by SGC against the United States under CERCLA for recovery of response costs and contribution, and a claim for contribution and indemnity in connection with the BPMD Site. SGC alleged that the United States is liable under CERCLA as a current owner at the Site, as a previous owner at the Site at the time of disposal of hazardous substances, and as an operator and arranger at the Site, in part as a result of the U.S. Environmental Protection Agency's (''EPA's'') response actions at the Gold King Mine. In addition, the proposed Consent Decree resolves the State of Colorado's potential claims against SGC and KGC under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of response costs incurred or to be incurred for response actions taken or to be taken by the State in connection with the release or threatened release of hazardous substances at the BPMD Site.

The proposed Consent Decree requires SGC and KGC to pay $45 million to the United States and the State of Colorado for response costs in connection with the BPMD Site, and requires the United States to pay $45 million to appropriate federal accounts for response costs. The proposed Consent Decree provides SGC and KGC and certain related parties (including Echo Bay, Inc., Kinross Gold USA, White Pine Gold Corporation, Echo Bay Management Corporation, and Echo Bay Exploration Inc.) with contribution protection under CERCLA and with covenants not to sue or take administrative action with regard to the Site under Sections 106, 107(a), and 113 of CERCLA; Sections 3008 and 7003 of the Resource Conservation and Recovery Act (''RCRA''); Sections 309 and 311 of the Clean Water Act; and certain Colorado statutory provisions. The proposed Consent Decree further terminates administrative orders issued to SGC related to Site access and investigation. Under the proposed consent decree, EPA, U.S. Department of the Interior, and U.S. Department of Agriculture receive contribution protection and covenants not to sue with regard to the BPMD Site under Sections 106 and 107(a) of CERCLA and certain Colorado statutory provisions.

The proposed Consent Decree does not resolve all claims in the multidistrict litigation. For instance, it does not address claims brought by the State of New Mexico, Navajo Nation, or individual plaintiffs against the EPA related to the Gold King Mine.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re: Gold King Mine Release in San Juan County, Colorado on August 5, 2015,* D.J. Ref. No. 90–11–3–11676 and No. 90–11–6–20816. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–01584 Filed 1–26–22; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Museum Assessment Program Application Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of three forms associated with the application process and five customer feedback surveys for the Museum Assessment Program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 26, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Mark Isaksen, Supervisory Grants Management Specialist, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Isaksen can be reached by telephone at 202–653–4667, or by email at *misaksen@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the clearance of Museum Assessment Program (MAP) application forms and surveys. The 60-Day Notice was published in the **Federal Register** on November 30, 2021 (86 FR 37979–67980).No comments were received.

MAP is a technical assistance program that offers museums an opportunity to strengthen operations and plan for the future through a process of self-assessment, institutional activities, and consultative peer review. MAP is supported through a cooperative agreement between IMLS and the American Alliance of Museums. Program participants choose from among five assessments: Organizational, Collections Stewardship, Community and Audience Engagement, Board Leadership, and Education and Interpretation. Those who complete the assessment receive a report with prioritized recommendations reflecting the assessment type chosen. The forms submitted for public review include the MAP Application, the MAP Signatures Page, the MAP Follow-Up Visit Request Form, and five surveys addressing specific aspects of the assessment process, the materials used, the individual(s) serving as peer reviewers, and the impact one year after the assessment's conclusion. The application forms are used in participant selection and notification, and the surveys are designed to enhance understanding of where and how the program can be improved.

Agency: Institute of Museum and Library Services.

Title: Museum Assessment Program Application Forms.

OMB Control Number: 3137–0101.

Agency Number: 3137.

Affected Public: Museum staff.

Total Number of Respondents: 650.

Frequency of Response: Once per request.

Average Minutes per Response: 142.

Total Burden Hours: 1,537.00.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: $45,556.68.

Total Annual Federal Costs: $3,820.50.

Dated: January 24, 2022.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2022–01610 Filed 1–26–22; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.72–71; NRC–2021–0212]

DTE Electric Company; Fermi-2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption to DTE Electric Company (DTE), for Fermi-2 (Fermi 2), Independent Spent Fuel Storage Installation (ISFSI). The exemption allows Fermi 2 to deviate from the timing requirements in Certificate of Compliance (CoC) No. 1014, Appendix A, ''Technical Specifications (TS) for the HI–STORM 100 Cask System,'' Section 5.4, ''Radioactive Effluent Control Program,'' Subsection C related to submission of an annual effluent report.

DATES: The exemption was issued on January 20, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0212 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0212. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tilda Liu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 404–997–4730, email: *Tilda.Liu@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC issued an exemption (ADAMS Package Accession No. ML21308A168) to DTE for the Fermi-2 (Fermi 2) ISFSI. By letter dated July 27, 2021 (ADAMS Accession No. ML21208A259) DTE submitted a request to the NRC for an exemption from requirements in Part 72 of title 10 of the *Code of Federal Regulations* (10 CFR). More specifically, DTE requested an exemption from the timing requirement in 10 CFR 72.44(d)(3) which specifies that an annual report be submitted to the NRC regarding effluent

releases within 60 days after the end of the 12-month monitoring period for the Fermi 2 ISFSI. The exemption as requested would have permitted DTE to delay submission of the relevant report from on or before March 1, the current deadline, to prior to May 1 of each year. Delaying this submission deadline would allow DTE to align the submittals of the relevant report and the Annual Radioactive Effluent Release Report.

The NRC staff could not grant DTE the exemption as requested because, under 10 CFR 72.13, ''Applicability,'' 10 CFR 72.44(d)(3) does not apply to general licensees such as DTE. That said, under 10 CFR 72.212, DTE must follow the technical specifications (TS) for the spent fuel casks it uses, and the relevant cask's TS require DTE to submit the 10 CFR 72.44(d)(3) effluent monitoring report. Thus, DTE must make the 10 CFR 72.44(d)(3) report. Consequently, the NRC, on its own initiative, granted DTE an exemption from the applicable requirements such that DTE would receive relief equivalent to the relief it requested. In practice, this means the NRC exempted DTE from 10 CFR 72.212(a)(2), (b)(2), (b)(3), (b)(4), (b)(5)(i), (b)(11), and 72.214 pursuant to 10 CFR 72.7, ''Specific exemptions'' for the ISFSI.

The exemption granted upon the NRC's own initiative only provides relief from the 60-day requirement so that the annual effluent release report for the Fermi 2 ISFSI may be submitted prior to May 1, rather than on or before March 1, of each year. The granted exemption only changes the due date and not the content of the information that the licensee would provide in the annual report. An analysis of this exemption can be found at the previously cited ADAMS accession number.

Dated: January 24, 2022.

For the Nuclear Regulatory Commission.

Yoira K. Diaz-Sanabria,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–01572 Filed 1–26–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11006380; NRC–2020–0198]

Perma-Fix Northwest Richland, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Export license application; opportunity to provide comments, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering issuing an export license amendment (XW027/01), requested by Perma-Fix Northwest Richland, Inc. (PFNW). The request seeks the NRC's approval for a license amendment authorizing the export of up to 60,000 kilograms of radioactive waste to Germany. The NRC is providing notice of the opportunity to comment, request a hearing, and petition to intervene on PFNW's application.

DATES: Submit comments by February 28, 2022. A request for a hearing or a petition for leave to intervene must be filed by February 28, 2022.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0198. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *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: Stephen C. Baker, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9059, email: *Stephen.Baker@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2020–0198 or Docket No. 11006380 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0198.
- *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 reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The export license amendment application from PFNW is available in ADAMS under Accession No. ML21354A043.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include NRC–2020–0198 or Docket No. 11006380 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. Discussion

In accordance with paragraph 110.70(b) of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is noticing the receipt of an export license amendment application submitted by PFNW on December 20, 2021, for the export of German-origin radioactive waste from PFNW processing facilities to Germany. The application seeks authorization to export no greater than 60,000 kilograms and 0.05 terabecquerels of low-level radioactive waste in the form of residual ash and residual metal or non-combustible material. The amendment application requests an expiration date of September 1, 2026.

The NRC is noticing the receipt of the application; providing the opportunity to submit written comments concerning the application; and providing the opportunity to request a hearing or petition for leave to intervene, for a period of 30 days after publication of this notice in the **Federal Register**. Any request for a hearing or petition for leave to intervene shall be served by the requestor or petitioner in accordance with 10 CFR 110.89. A hearing request or petition for leave to intervene must include the information specified in 10 CFR 110.82(b).

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007 (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). Information about filing electronically is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 10 days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by calling 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.

The information concerning this application for an export license amendment follows.

NRC Export License Amendment Application

Application Information	
Name of Applicant	Perma-Fix Northwest Richland, Inc. (PFNW)
Date of Application	December 13, 2021.
Date Received	December 20, 2021.
Application No.	XW027/01.
Docket No.	11006380.
ADAMS Accession No..	
Description of Material	
Material Type	Radioactive material consisting of dry active waste, incinerable dry active material including personal protective equipment, paper, glass, plastic, and liquid. The waste was generated by medical and pharmaceutical research projects and other industries (excluding Nuclear Power Plants).
Total Quantity	This license authorizes the export of up to 60,000 kilograms of residual ash and residual metal or non-combustible material that cannot be recycled. Any non-conforming waste that cannot be treated may be returned in its original state. The maximum quantity of material returned will not exceed .05 TBq.
End Use	Disposal in Germany.
Country of Destination	Germany.

Dated: January 24, 2022.

For the Nuclear Regulatory Commission.

David L. Skeen,

Deputy Director, Office of International Programs.

[FR Doc. 2022–01581 Filed 1–26–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–22, OMB Control No. 3235–0006]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form 13F

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 13(f) [1] of the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1 [3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts that have in the aggregate a fair market value of at least $100,000,000 of certain U.S. exchange-traded equity securities, as set forth in rule 13f–1(c), to file quarterly reports with the Commission on Form 13F.[4]

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(6)(A) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository

[1] 15 U.S.C. 78m(f).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13f–1.

[4] 17 CFR 249.325.

of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The currently approved burden estimates include a total hour burden of 472,521.6 hours, with an internal cost burden of $31,186,425.60, to comply with Form 13F.[5] Consistent with a recent rulemaking proposal that made adjustments to these estimates due primarily to the Commission's belief that the currently approved estimates do not appropriately reflect the information collection costs associated with Form 13F,[6] the table below reflects the revised estimates.

TABLE—FORM 13F CURRENT AND REVISED BURDEN ESTIMATES

	Initial hours	Annual hours		Wage rate	Internal time cost	External costs [1]
Revisions to Current PRA Burden Estimates						
Revised Burdens for 13F–HR Filings						
Current estimated annual burden of Form 13F–HR per filer.	.....	80.8 hours	×	$66 [2]	$5,332.80.	
Revised current annual estimated burden per filer.	.....	10 hours [3]	×	$202.50 (blended rate for senior programmer and compliance clerk) [4].	$2,025	$789 [6].
	.....	1 hour [3]		$368 (compliance attorney rate) [5].	$368.	
Total revised estimated burden per filer.	.....	11 hours		.....	$2,393	$789.
Number of filers	.....	5,466 filers [7]		.....	5,466 filers	5,466 filers.
Revised current annual burden of Form 13F–HR filings.		60,126 hours			$13,080,138	$4,312,674.
Revised Burdens for 13F–NT Filings						
Current estimated annual burden of Form 13F–NT.	.....	80.8 hours.				
Revised current annual burden of Form 13F–NT per filer.	.....	4 hours	×	$71 (wage rate for compliance clerk).	$284	$300.
Number of filers	.....	1,535 filers [8]		.....	1,535 filers	1,535 filers.
	.....	6,140 hours		.....	$435,940	$460,500.
Revised Burdens for Form 13F Amendment Filings						
Current estimated burden per amendment filing.	.....	4 hours	.....	$66.00	$264.	
Revised current estimated burden per amendment.	.....	3.5 hours [9]	×	$202.50 (blended rate for senior programmer and compliance clerk).	$708.75	$300.
	.....	0.5 hour [9]	.....	$368 (compliance attorney rate).	$184.	
Total revised estimates burden per amendment.	.....	4 hours		.....	$892.75	$300.

[5] This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2018.

[6] *See* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F, Investment Company Release No. 34415 (Nov. 4, 2021).

TABLE—FORM 13F CURRENT AND REVISED BURDEN ESTIMATES—Continued

	Initial hours	Annual hours		Wage rate	Internal time cost	External costs [1]
Number of amendments.	.....	244 amendments [10]		.....	244 amendments	244 amendments.
Revised current annual estimated burden of all amendments.	.....	976 hours		.....	$217,831	$73,200.
Total Estimated Form 13F Burden						
Currently approved burden estimates.	(1)	472,521.6 hours		.....	$31,186,425.60	$0.
Revised current burden estimates.	(1)	67,242 hours		.....	$13,733,909	$4,846,374.

Notes:

[1] The external costs of complying with Form 13F can vary among filers. Some filers use third-party vendors for a range of services in connection with filing reports on Form 13F, while other filers use vendors for more limited purposes such as providing more user-friendly versions of the list of section 13(f) Securities. For purposes of the PRA, we estimate that each filer will spend an average of $300 on vendor services each year in connection with the filer's four quarterly reports on Form 13F–HR or Form 13F–NT, as applicable, in addition to the estimated vendor costs associated with any amendments. In addition, some filers engage outside legal services in connection with the preparation of requests for confidential treatment or analyses regarding possible requests, or in connection with the form's disclosure requirements. For purposes of the PRA, we estimate that each manager filing reports on Form 13F–HR will incur $489 for one hour of outside legal services each year.

[2] $66 was the estimated wage rate for a compliance clerk in 2018.

[3] The estimate reduces the total burden hours associated with complying with the reporting requirements of Form 13F–HR from 80.8 to 11 hours. We believe that this reduction adequately reflects the reduction in the time managers spend complying with Form 13F–HR as a result of advances in technology that have occurred since Form 13F was adopted. The revised estimate also assumes that an in-house compliance attorney would spend 1 hour annually on the preparation of the filing, as well as determining whether a 13(f) Confidential Treatment Request should be filed. The remaining 10 hours would be divided equally between a senior programmer and compliance clerk.

[4] The $202.50 wage rate reflects current estimates of the blended hourly rate for an in-house senior programmer ($334) and in-house compliance clerk ($71). $202.50 is based on the following calculation: ($334 + $71) / 2 = $202.50. The $334 per hour figure for a senior programmer is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 (''SIFMA Report''), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The $71 per hour figure for a compliance clerk is based on salary information from the SIFMA Report, modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[5] The $368 per hour figure for a compliance attorney is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013 (''SIFMA Report''), modified by Commission staff to account for an 1800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[6] $789 includes an estimated $300 paid to a third-party vendor in connection with the Form 13F–HR filing as well as an estimated $489 for one hour of outside legal services. We estimate that Form 13F–HR filers will require some level of external legal counsel in connection with these filings.

[7] This estimate is based on the number of 13F–HR filers as of December 2019.

[8] This estimate is based on the number of Form 13F–NT filers as of December 2019.

[9] The revised estimate assumes that an in-house compliance attorney would spend 0.5 hours annually on the preparation of the filing amendment, as well as determining whether a 13(f) Confidential Treatment Request should be filed. The remaining 3.5 hours would be divided equally between a senior programmer and compliance clerk.

[10] This estimate is based on the number of Form 13F amendments filed as of December 2019.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* 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.

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01613 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–017, OMB Control No. 3235–0017]

Submission for OMB Review; Comment Request, Extension: Rules 6a–1 and 6a–2, Form 1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in

Rule 6a–1 (17 CFR 240.6a–1), Rule 6a–2 (17 CFR 240.6a–2), and Form 1 (17 CFR 249.1) under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') (15 U.S.C. 78a *et seq.*).

The Exchange Act sets forth a regulatory scheme for national securities exchanges. Rule 6a–1 under the Act generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1. An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a–2 under the Act requires registered and exempt exchanges: (1) To amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a–1 and 6a–2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a–1 on Form 1, the Commission would not be able to determine whether the respondent has met the criteria for registration (or an exemption from registration) set forth in Section 6 of the Exchange Act. The amendments and periodic updates of information submitted pursuant to Rule 6a–2 are necessary to assist the Commission in determining whether a national securities exchange or exempt exchange is continuing to operate in compliance with the Exchange Act.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will receive approximately one initial Form 1 filing per year and that each respondent would incur an average burden of 880 hours to file an initial Form 1 at an average internal compliance cost per response of approximately $340,886. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 880 hours (one response/respondent × one respondent × 880 hours/response) and an internal compliance cost of $340,886 (one response/respondent × one respondent × $340,886/response).

There currently are 24 entities registered as national securities exchanges. The Commission estimates that each registered or exempt exchange files eleven amendments or periodic updates to Form 1 per year, incurring an average burden of 25 hours per amendment to comply with Rule 6a–2. The Commission estimates that the average internal compliance cost for a national securities exchange per response would be approximately $8,480. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a–2 would be 6,600 hours (24 respondents × 25 hours/response × 11 responses/respondent per year) and an internal compliance cost of $2,238,720 (24 respondents × $8,480/response × 11 responses/respondent per year).

The total estimated annual time burden associated with Rules 6a–1 and 6a–2 is thus approximately 7,480 hours (880 + 6,600).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to

(i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01616 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–792; OMB Control No. 3235–0739]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in the following: Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 from the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money Market Funds (17 CFR 240.10b–10(a)).

Rule 10b–10 under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) generally requires broker-dealers to provide customers with specified information relating to their securities transactions at or before the completion of the transactions. Rule 10b–10(b), however, provides an exception from this requirement for certain transactions in money market funds that attempt to maintain a stable net asset value when no sales load or redemption fee is charged. The exception permits broker-dealers to provide transaction information to money market fund shareholders on a monthly, rather than immediate, basis, subject to the conditions. Amendments to Rule 2a–7 (17 CFR 270.2a–7) of the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) among other things, means, absent an exemption, broker-dealers would not be able to continue to rely on the exception under Exchange Act Rule 10b–10(b) for transactions in money market funds operating in accordance with Investment Company Act Rule 2a–7(c)(1)(ii).[1]

In 2015, the Commission issued an Order Granting a Conditional Exemption under the Securities Exchange Act of 1934 From The Confirmation Requirements of Exchange Act Rule 10b–10(a) For Certain Transactions In Money Market Funds (''Order'') [2] which allows broker-

[1] *See generally* Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9408, Investment Advisers Act Release No. 3616, Investment Company Act Release No. 30551 (June 5, 2013), 78 FR 36834, 36934 (June 19, 2013); *see also* Exchange Act Rule 10b–10(b)(1), 17 CFR 240.10b–10(b)(1) (limiting alternative monthly reporting to money market funds that attempt to maintain a stable NAV).

[2] *See* Order Granting a Conditional Exemption Under the Securities Exchange Act of 1934 From the Confirmation Requirements of Exchange Act Rule 10b–10(a) for Certain Transactions in Money

dealers, subject to certain conditions, to provide transaction information to investors in any money market fund operating pursuant to Investment Company Act Rule 2a–7(c)(1)(ii) on a monthly basis in lieu of providing immediate confirmations as required under Exchange Act Rule 10b–10(a) (''the Exemption''). Accordingly, to be eligible for the Exemption, a broker-dealer must (1) provide an initial written notification to the customer of its ability to request delivery of immediate confirmations consistent with the written notification requirements of Exchange Act Rule 10b–10(a), and (2) not receive any such request to receive immediate confirms from the customer.

As of December 31, 2020, the Commission estimates there are approximately 154 broker-dealers that clear customer transactions or carry customer funds and securities who would be responsible for providing customer confirmations. The Commission estimates that the cost of the ongoing notification requirements would be minimal, approximately 5% of the initial burden which was previously estimated to be 36 hours per broker-dealer, or approximately 1.8 hours per broker-dealer per year to provide ongoing notifications or a total burden of 277 hours annually for the 154 carrying broker-dealers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) >*MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* < and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Market Funds, Exchange Act Release No. 34–76480 (Nov. 19, 2015), 80 FR 73849 (Nov. 25, 2015).

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01617 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–789, OMB Control No. 3235–0731]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Generic ICR:

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the SEC and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. 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.

Below is the projected average annual estimates each year for the next three years:

Expected Annual Number of activities: [20].

Respondents: [20,000].

Annual responses: [20,000].

Frequency of Response: Once per request.

Average minutes per response: [10].

Annual burden hours: [3,500].

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 24, 2024.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01638 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34480; 812–15245]

Redwood Enhanced Income Corp., et al.

January 21, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.

Applicants: Redwood Enhanced Income Corp. (''RBDC''), Redwood Drawdown Master Fund III, L.P., Redwood Master Fund, Ltd., Redwood Opportunity Master Fund, Ltd., and Redwood Capital Management, LLC (''Redwood'').

Filing Dates: The application was filed on July 8, 2021, and amended on October 8, 2021, and January 13, 2022.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on February 16, 2022, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Mr. Adam Bensley, Redwood Capital Management, LLC at *abensley@redwoodcap.com.*

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at 202–551–6811, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *https://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The applicants request an order of the Commission under sections 17(d) and 57(i) under the Act and rule 17d–1 under the Act to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), one or more Regulated Funds [1] and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub (defined below)) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

Applicants

2. RBDC is a Maryland corporation organized as a non-diversified closed-end management investment company that intends to elect to be regulated as a business development company (''BDC'') under the Act.[4] RBDC intends to have a Board,[5] a majority of which will be Independent Directors.[6]

3. Redwood, a Delaware limited liability company that is registered under the Advisers Act serves as the investment adviser to the Existing Affiliated Funds and RBDC.

4. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[7] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

[1] ''Regulated Funds'' means RBDC and any Future Regulated Fund. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser(s), if any) is an Adviser, and (c) that intends to participate in the proposed co-investment program (the ''Co-Investment Program'').

''Adviser'' means Redwood together with any future investment adviser that intends to participate in the Co-Investment Program (defined below) that (i) controls, is controlled by or is under common control with Redwood, (ii) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund, any Future Affiliated Fund or any Redwood Proprietary Account. ''Future Affiliated Fund'' means any entity (a) whose investment adviser (and sub-adviser, if any) is an Adviser, (b) that would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act and (c) that intends to participate in the Co-Investment Program. ''Redwood Proprietary Account'' means any account of the Adviser and any direct or indirect, wholly-owned subsidiary of the Adviser that, from time to time, may hold various financial assets in a principal capacity.

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions set forth in the application.

[4] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[5] ''Board'' means (i) with respect to a Regulated Fund, the board of directors (or the equivalent) of the Regulated Fund.

[6] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[7] ''Wholly-Owned Investment Sub'' means an entity (i) that is a wholly-owned by the Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund; (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

Applicants' Representations

A. Allocation Process

1. Applicants represent that the Adviser has established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

2. If the requested Order is granted, the Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that when such opportunities arise, the Adviser to the relevant Regulated Funds is promptly notified and receives the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [8] and any Board-Established Criteria [9] of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receive sufficient information to allow such Adviser's investment advisory personnel committee to make an independent determination and recommendations under the conditions.

3. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

4. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, such Adviser's investment advisory personnel will approve an investment amount to be allocated to each Regulated Fund and/or Affiliated Fund participating in the Potential Co-Investment Transaction. Applicants state further that, each proposed order amount may be reviewed and adjusted, in accordance with the Adviser's written allocation policies and procedures, by the Adviser's investment advisory personnel.[10] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[11]

5. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[12] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Adviser will establish, implement and maintain.[13]

B. Follow-On Investments

6. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments [14] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

7. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[15] If the Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect

[8] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

[9] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to such Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[10] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of each Adviser.

[11] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

[12] The Adviser will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act.

[13] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[14] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[15] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

8. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment [16] or (ii) a Non-Negotiated Follow-On Investment.[17] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

9. Applicants propose that Dispositions [18] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer have previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[19]

10. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [20] or (ii) the securities are Tradable Securities [21] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

11. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

12. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on matters specified in the Condition.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the

[16] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[17] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[18] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[19] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review is required because such findings were not required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[20] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[21] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Adviser to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) Redwood manages and may be deemed to control, each of the Existing Funds and any Future Affiliated Fund; (ii) Redwood serves as investment adviser to, and may be deemed to control, RBDC, and an Adviser to Regulated Funds will be the investment adviser (or subadviser, if any) to, and may be deemed to control, any Future Regulated Fund; and (iii) the Adviser to Regulated Funds and the Adviser to Affiliated Funds will be under common control. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds, in a manner described by section 57(b) and related to the other Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by 57(b) or rule 17d–1, as applicable, and thus prohibited from participating in Co-Investment Transactions with each other. In addition, because the Redwood Proprietary Accounts are controlled by an Adviser and, therefore, under common control with RBDC, and any Future Regulated Funds, the Redwood Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the Co-Investment Program.

4. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Adviser. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a). The Adviser will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b). When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a). If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b). If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c). After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i). The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii). the transaction is consistent with:

(A). The interests of the Regulated Fund's equity holders; and

(B). the Regulated Fund's then-current Objectives and Strategies;

(iii). the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching

the conclusions required by this Condition 2(c)(iii) if:

(A). The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B). any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv). the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [22] financial benefit to the Adviser, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[23] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[24]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i). The Adviser to such Regulated Fund or Affiliated Fund [25] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b). *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c). *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i). (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [26] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii). each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated

[22] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[23] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[24] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Adviser, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[25] Any Redwood Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[26] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a). *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii). the Adviser will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i). The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii). the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c). *Additional Requirements:* The Disposition may only be completed in reliance on the Order if:

(i). *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iv). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [27] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b). *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i). (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[28] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii). it is a Non-Negotiated Follow-On Investment.

(c). *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds,

[27] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[28] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a). *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i). The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii). the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii). the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b). *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c). *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i). *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii). *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii). *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv). *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d). *Allocation.* If, with respect to any such Follow-On Investment:

(i). The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii). the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e). *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a). Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b). All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c). Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d). The Independent Directors will consider at least annually whether

continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[29] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by an Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Adviser, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Adviser, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01545 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

[29] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–015, OMB Control No. 3235–0021]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 6a–3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 6a–3 (17 CFR 240.6a–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 6 of the Act sets out a framework for the registration and regulation of national securities exchanges. Under Rule 6a–3, one of the rules that implements Section 6, a national securities exchange (or an exchange exempted from registration as a national securities exchange based on limited trading volume) must provide certain supplemental information to the Commission, including any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Rule 6a–3 also requires the exchanges to file monthly reports that set forth the volume and aggregate dollar amount of certain securities sold on the exchange each month.

The information required to be filed with the Commission pursuant to Rule 6a–3 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The Commission estimates that each respondent makes approximately 12 such filings on an annual basis. Each response takes approximately 0.5 hours. In addition, respondents incur shipping costs of approximately $20 per submission. Currently, 24 respondents (24 national securities exchanges) are subject to the collection of information requirements of Rule 6a–3. The Commission estimates that the total burden for all respondents is 144 hours and $5,760 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01639 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94024; File No. SR–NYSEArca–2021–28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of ConvexityShares Daily 1.5x SPIKES Futures ETF Under NYSE Arca Rule 8.200–E (Trust Issued Receipts)

January 21, 2022.

I. Introduction

On May 13, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the ConvexityShares Daily 1.5x SPIKES Futures ETF (''Fund''), a series of the ConvexityShares Trust (''Trust''), under NYSE Arca Rule 8.200–E, Commentary .02 (''Trust Issued Receipts''). The proposed rule change was published for comment in the **Federal Register** on May 26, 2021.[3] On July 2, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On July 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On August 12, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.[8] On November 15, 2021, pursuant to Section 19(b)(2) of the Act,[9] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[10] The Commission has received no comment letters on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1 [11]

The Exchange proposes to list and trade Shares of the Fund [12] under NYSE Arca Rule 8.200–E, Commentary .02 which governs the listing and trading of Trust Issued Receipts [13] on the Exchange. The Fund will be managed and controlled by ConvexityShares, LLC (''Sponsor''), a commodity pool operator.[14] Teucrium Trading, LLC, a commodity trading adviser registered with the Commodity Futures Trading Commission, will be the Sub-Adviser for the Fund (''Sub-Adviser'') and will manage the Fund's commodity futures investment strategy.[15] U.S. Bank will provide custody and fund accounting to the Trust and the Fund; U.S. Bancorp Fund Services will be the transfer agent for the Shares and administrator for the Fund; and Foreside will serve as the distributor for the Fund.

The Fund will seek daily investment results, before fees and expenses, that correspond to one-and-a-half times (1.5x) the performance of its benchmark index for a single day. The Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (''Index''), an investable index of SPIKES futures contracts.[16] The Index is intended to reflect the returns that are potentially available through an unleveraged investment in a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (''SPIKES Index'').[17]

The Index is comprised solely of SPIKES futures contracts.[18] The Index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91949 (May 20, 2021), 86 FR 28420.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92320, 86 FR 36309 (July 9, 2021).

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2021-28/srnysearca202128-9090695-246773.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 92651, 86 FR 46292 (August 18, 2021).

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 93575, 86 FR 64978 (November 19, 2021). The Commission designated January 21, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change.

[11] Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in Amendment No. 1, *supra* note 6.

[12] The Fund has filed a registration statement on Form S–1 under the Securities Act of 1933, dated May 25, 2021 (''Registration Statement''). The Registration Statement for the Fund is not yet effective and the Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

[13] Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[14] The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[15] The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[16] The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as ''T3 Index'' or ''Index Sponsor''). The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition of and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Index is calculated and published by Solactive AG, which is not affiliated with T3 Index.

[17] The Exchange states that the SPIKES Index is a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF Trust (''SPY'') over 30 days in the future. SPY is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (''S&P 500''). The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES Index is a theoretical calculation and cannot be traded on a spot basis. T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained and published by Miami International Securities Exchange, LLC via the Options Price Reporting Authority.

[18] According to the Exchange, SPIKES futures contracts were launched for trading by the Minneapolis Grain Exchange, LLC (''MGEX'') on December 14, 2020. While the SPIKES Index represents a measure of the expected 30-day

employs rules for selecting the SPIKES futures contracts comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement [19] program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month.

The Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances (described below), the Fund may also invest in futures contracts and swap contracts (''VIX Related Positions'') on the Cboe Volatility Index (''VIX'').[20] The Exchange states that the VIX is an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Sponsor or Sub-Adviser determines the type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide daily leveraged exposure to the Index to seek investment results equal to one-and-a-half times the performance of the Index. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures contracts, or if the market for a specific futures contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash), or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts (such as during periods of market volatility or illiquidity, or when trading in SPY is halted), the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions. The Sponsor expects the Fund's positions in VIX Related Positions to consist primarily of VIX futures contracts, which are traded on the Cboe Futures Exchange. However, in the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.[21] The Fund will also hold cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. Specifically, the Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated and disseminated daily and will be made available to all market participants at the same time. Each day before 9:30 a.m., E.T., the daily holdings of the Fund will be available on the Fund's website, *www.convexityshares.com,* which will be publicly accessible at no charge.[24] This website disclosure of the Fund's daily holdings will occur at approximately the same time as the disclosure by the Trust of the daily holdings to authorized participants, so that all market participants will be provided daily holdings information at approximately the same time, and the same holdings information will be provided on the public website as in electronic files provided to authorized participants. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. As required by NYSE Arca Rule 8.200–E, Commentary .02, an updated Intraday Fund Value (''IFV'') will be calculated and widely disseminated by one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session (9:30 a.m., E.T., to 4:00 p.m., E.T.). The IFV will be readily available from the Fund's website, automated quotation systems, published or other public sources, or major market data vendors' website or on-line information services. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and

volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

[19] According to the Exchange, a Trade at Settlement (''TAS'') transaction is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contracts month. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. *See* MGEX Rule 83.15 at *http://www.mgex.com/documents/20210318-Rulebook.pdf.*

[20] According to the Exchange, the VIX is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

[21] The Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believe are creditworthy and by limiting the Fund's exposure to each counterparty. The Exchange represents that the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] The daily website disclosure of portfolio holdings will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of a swap, the type of swap, its notional value and the underlying instrument, index or asset on which the swap is based, (iii) the market value of each investment held by the Fund, (iv) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (v) the amount of cash held in the Fund's portfolio.

other applicable quantitative information. The level of the Index will be published at least every 15 seconds, both in real time from 9:30 a.m. to 4 p.m., E.T., and at the close of trading on each business day by Bloomberg and Reuters. The Fund's website will also provide information regarding the SPIKES futures contracts constituting the Index and the Index methodology. In addition, the level of the SPIKES Index and the VIX is available from Bloomberg and Reuters.

Complete real-time data for SPIKES futures contracts, which trade on MGEX, is available by subscription through on-line information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. Price information regarding cleared VIX swap contracts is available from major market data vendors and price information for non-exchange-traded VIX swap contracts may be obtained from brokers and dealers who make markets in such instruments. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors.

The Exchange's rules regarding trading halts further help to ensure the maintenance of fair and orderly markets for the Shares, which is consistent with the protection of investors and the public interest. Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E (Trading Halts Due to Extraordinary Market Volatility) have been reached. The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares or disclosure of the Fund's daily holdings is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV and the Fund's daily holdings is available to all market participants. NYSEArca Rule 8.200–E, Commentary .02, enumerates additional circumstances under which the Exchange will consider the suspension of trading in and will commence delisting proceedings for the Shares.

The Exchange's proposal is designed to safeguard material non-public information relating to the Fund's portfolio. Specifically, as the Exchange states, neither the Sponsor nor the Sub-Adviser is registered as a broker-dealer or affiliated with a broker-dealer. In the event that (a) either the Sponsor or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor or sub-adviser is registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or personnel of the broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. Moreover, trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit Holders (''ETP Holders'') acting as registered Market Makers [25] in Trust Issued Receipts to facilitate surveillance. In addition, the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

Furthermore, the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments with other markets and entities that are members of the Intermarket Surveillance Group (''ISG''). In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA''). All futures contracts in which the Fund invests shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA. The Exchange states that trading in the Shares will be subject to existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange has demonstrated there is an appropriate regulatory framework to support listing and trading of the Shares, including trading rules, surveillance, and listing standards. Moreover, the trading of the Shares on the Exchange will be subject to the Exchange's and other rules listed below. Specifically:

(1) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities;

(2) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E;

(3) Pursuant to NYSEArca Rule 8.200–E(a), all statements and representations made in the filing regarding (a) the description of the Index, portfolio, or reference asset, (b) limitations on Index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in the filing will constitute continued listing requirements for the Shares. The issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor [26] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

[25] As defined in NYSE Arca Rule 1.1(z) the term ''Market Maker'' means an ETP Holder that acts as a Market Maker pursuant to NYSEArca Rule 7–E.

[26] Certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

(4) The Exchange has the appropriate rules to facilitate transactions in the Shares during all trading sessions;

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares; [27]

(6) FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged and inverse leveraged securities (which include the Shares) and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009), and 09–65 (November 2009). ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices;

(7) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act; [28] and

(8) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act [29] and the rules and regulations thereunder applicable to a national securities exchange.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSEArca–2021–28), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01564 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

[27] The Exchange states that the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Units and Redemption Units (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

[28] 17 CFR 240.10A–3.

[29] 15 U.S.C. 78f(b)(5).

[30] *Id.*

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–401, OMB Control No. 3235–0459]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 3a–4

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l-3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'') provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include ''wrap fee'' programs, generally are designed to provide professional portfolio management services on a discretionary basis to clients who are investing less than the minimum investments for individual accounts usually required by the investment adviser but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Because of this similarity of management, some of these investment advisory programs may meet the definition of investment company under the Act.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in accordance with the rule are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

For a program to be eligible for the rule's safe harbor, each client's account must be managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor [2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.

Additionally, the sponsor (or its designee) must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

The Commission staff estimates that 27,979,460 clients participate each year in investment advisory programs relying on rule 3a–4.[4] Of that number, the staff

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Rel. No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31, 1997)] (''Adopting Release''). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for programs that meet the requirements of rule 3a–4. *See* 17 CFR 270.3a–4, introductory note.

[2] For purposes of rule 3a–4, the term ''sponsor'' refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

[4] These estimates are based on an analysis of the number of individual clients from Form ADV Item 5D(a)(1) and (b)(1) of advisers that report they provide portfolio management to wrap programs as

Continued

estimates that 2,127,147 are new clients and 25,852,313 are continuing clients.[5] The staff estimates that each year the investment advisory program sponsors' staff engage in 1.5 hours per new client and 1 hour per continuing client to prepare, conduct and/or review interviews regarding the client's financial situation and investment objectives as required by the rule.[6] Furthermore, the staff estimates that each year the investment advisory program sponsors' staff spends 1 hour per client each year to prepare and mail quarterly client account statements, including notices to update information.[7] Based on the estimates above, the Commission estimates that the total annual burden of the rule's paperwork requirements is 57,022,493 hours.[8]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, c/o John R. Pezzullo, Director/Chief Information Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Comments must be submitted to OMB within 30 days 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.

Dated: January 21, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01555 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

indicated in Form ADV Item 5I(2)(b) and (c), and the number of individual clients of advisers that identify as internet advisers in Form ADV Item 2A(11). From analysis comparing reported individual client assets in Form ADV Item 5D(a)(3) and 5D(b)(3) to reported wrap portfolio manager assets in Form ADV Item 5I(2)(b) and (c), we discount the estimated number of individual clients of non-internet advisers providing portfolio management to wrap programs by 10%.

[5] These estimates are based on the number of new clients expected due to average year-over-year growth in individual clients from Form ADV Item 5D(a)(1) and (b)(1) (about 8%) and an assumed rate of yearly client turnover of 10%.

[6] These estimates are based upon consultation with investment advisers that operate investment advisory programs that rely on rule 3a–4.

[7] The staff bases this estimate in part on the fact that, by business necessity, computer records already will be available that contain the information in the quarterly reports.

[8] This estimate is based on the following calculation: (25,852,313 continuing clients × 1 hour) + (2,127,147 new clients × 1.5 hours) + (27,979,460 total clients × (0.25 hours × 4 statements)) = 57,022,493 hours.

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0627]

Rule 17g–4 30 Day Notice 2021—Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17g–4

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–4 (17 CFR 240.17g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

The Credit Rating Agency Reform Act of 2006 added a new section 15E, ''Registration of Nationally Recognized Statistical Rating Organizations,''[1] to the Exchange Act. Pursuant to the authority granted under section 15E of the Exchange Act, the Commission adopted Rule 17g–4, which requires that a nationally recognized statistical rating organization (''NRSRO'') establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information, including policies and procedures reasonably designed to prevent: (a) The inappropriate dissemination of material nonpublic information obtained in connection with the performance of credit rating services; (b) a person within the NRSRO from trading on material nonpublic information; and (c) the inappropriate dissemination of a pending credit rating action.[2]

There are 9 credit rating agencies registered with the Commission as NRSROs under section 15E of the Exchange Act, which have already established the policies and procedures required by Rule 17g–4. Based on staff experience, an NRSRO is estimated to spend an average of approximately 10 hours per year reviewing its policies and procedures regarding material nonpublic information and updating them (if necessary), resulting in an average industry-wide annual hour burden of approximately 90 hours.[3]

An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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.

The public may view background documentation for this information collection at the following website: >*www.reginfo.gov*<. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) >*www.reginfo.gov/public/do/PRAMain*< and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 21, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01547 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78o–7.

[2] *See* 17 CFR 240.17g–4; Release No. 34–55231 (Feb. 2, 2007), 72 FR 6378 (Feb. 9, 2007); Release No. 34–55857 (June 5, 2007), 72 FR 33564 (June 18, 2007).

[3] 9 currently registered NRSROs × 10 hours = 90 hours.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–489, OMB Control No. 3235–0541]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 606 of Regulation NMS

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 606 of Regulation NMS (''Rule 606'') (17 CFR 242.606) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et. seq.*).

Rule 606 (formerly known as Rule 11Ac1–6) requires disclosure by broker-dealers of (1) pursuant to Rule 606(a)(1), a quarterly aggregated public report on the handling of orders in NMS stocks that are submitted on a held basis and orders in NMS securities that are option contracts with a market value less than $50,000; (2) pursuant to Rule 606(b)(1), a report, upon request of a customer, on the routing of that customer's orders in NMS stocks that are submitted on a held basis, orders in NMS stocks that are submitted on a not held basis and do not qualify for two de minimis exceptions, and orders in NMS securities that are option contracts, containing certain information on the broker-dealer's routing of such orders for that customer for the prior six months; and (3) pursuant to Rule 606(b)(3), a report, upon request of a customer that places with the broker-dealer, directly or indirectly, NMS stock orders of any size that are submitted on a not held basis (subject to two de minimis exceptions), containing certain information on the broker-dealer's handling of such orders for that customer for the prior six months.

The total annual time burden associated with Rule 606 is approximately 190,240 hours per year and the total annual cost burden associated with Rule 606 is approximately $1,300,000 per year, calculated as described below.

The Commission estimates that out of the currently 3,585 broker-dealers that are subject to the collection of information obligations of Rule 606(a)(1), clearing brokers bear a substantial portion of the burden of complying with the reporting and recordkeeping requirements of Rule 606 on behalf of small to mid-sized introducing firms. There currently are approximately 186 clearing brokers. In addition, there are approximately 78 introducing brokers that receive funds or securities from their customers. Because at least some of these firms also may have greater involvement in determining where customer orders are routed for execution, they have been included, along with clearing brokers, in estimating the total burden of Rule 606(a)(1).

The Commission staff estimates that each firm significantly involved in order routing practices incurs an average burden of 40 hours to prepare and disseminate the quarterly report required by Rule 606(a)(1), or a burden of 160 hours per year. With an estimated 264 [1] broker-dealers significantly involved in order routing practices, the total industry-wide time burden per year to comply with the quarterly reporting requirement in Rule 606 is estimated to be 42,240 hours (160 × 264). Additionally, for each of the 264 broker-dealers subject to disclosure requirements of Rule 606(a)(1), the Commission estimates the annual burden under Rule 606(a)(1)(iv) to monitor payment for order flow and profit-sharing relationships and potential self-regulatory organization rule changes that could impact their order routing decisions and incorporate any new information into their reports to be 10 hours and the annual burden for each broker-dealer to describe and update any terms of payment for order flow arrangements and profit-sharing relationships with a Specified Venue that may influence their order routing decisions to be 15 hours, for a total annual time burden of approximately 6,600 hours (25 × 264). Therefore, the estimated total annual time burden to comply with Rule 606(a)(1) is 48,840 hours (42,240 + 6,600).

Clearing brokers generally bear the burden of responding to individual customer requests under Rule 606(b)(1) for order handling information. The Commission staff estimates that an average clearing broker incurs an annual burden of 400 hours (2000 responses × 0.2 hours/response) to prepare, disseminate, and retain responses to customers required by Rule 606(b)(1). With an estimated 186 clearing brokers subject to Rule 606(b)(1), the total industry-wide time burden per year to comply with the customer response requirement in Rule 606(b)(1) is estimated to be 74,400 hours (186 × 400).

The Commission estimates that approximately 200 broker-dealers are involved in routing orders subject to the disclosure requirements of Rule 606(b)(3). The Commission believes that some such broker-dealers will respond to requests for customer-specific reports in house, while others will engage a third-party service provider to do so. The Commission estimates that approximately 135 broker-dealers will respond in-house to individual customer requests for information on order handling under Rule 606(b)(3), and that for each, the individual annual time burden will be 400 hours (200 responses × 2 hours/response), with a total annual time burden of 54,000 hours (400 × 135).

The Commission estimates that approximately 65 broker-dealers will engage a third party to respond to individual customer requests, and that for each, the individual annual time burden will be 200 hours (200 responses × 1 hour/response), with a total annual time burden of 13,000 hours (200 × 65). The total annual cost burden associated with engaging such third parties is approximately $1,300,000 (65 × 200 annual requests × $100 per request to engage a third-party service provider). Therefore, the estimated total annual burden to comply with Rule 606(b)(3) is 67,000 hours (54,000 + 13,000) and $1,300,000.

The total annual time burden associated with Rule 606 is thus approximately 190,240 hours per year (48,840 + 74,400 + 67,000) and the total annual cost burden associated with Rule 606 is approximately $1,300,000 per year.

The collection of information obligations imposed by Rule 606 are mandatory. The responses will be available to the public and will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

[1] 186 clearing brokers + 78 introducing brokers = 264.

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01615 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94025; File No. SR–NYSEArca–2021–29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of ConvexityShares 1x SPIKES Futures ETF Under NYSE Arca Rule 8.200–E (Trust Issued Receipts)

January 21, 2022.

I. Introduction

On May 13, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the ConvexityShares 1x SPIKES Futures ETF (''Fund''), a series of the ConvexityShares Trust (''Trust''), under NYSE Arca Rule 8.200–E, Commentary .02 (''Trust Issued Receipts''). The proposed rule change was published for comment in the **Federal Register** on May 26, 2021.[3] On July 2, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On July 26, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On August 12, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.[8] On November 15, 2021, pursuant to Section 19(b)(2) of the Act,[9] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[10]

The Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1 [11]

The Exchange proposes to list and trade Shares of the Fund [12] under NYSE Arca Rule 8.200–E, Commentary .02 which governs the listing and trading of Trust Issued Receipts [13] on the Exchange. The Fund will be managed and controlled by ConvexityShares, LLC (''Sponsor''), a commodity pool operator.[14] Teucrium Trading, LLC, a commodity trading adviser registered with the Commodity Futures Trading Commission, will be the Sub-Adviser for the Fund (''Sub-Adviser'') and will manage the Fund's commodity futures investment strategy.[15] U.S. Bank will provide custody and fund accounting to the Trust and the Fund; U.S. Bancorp Fund Services will be the transfer agent for the Shares and administrator for the Fund; and Foreside will serve as the distributor for the Fund.

The Fund will seek investment results, before fees and expenses, that correspond to the performance of its benchmark index, the T3 SPIKE Front 2 Futures Index (''Index''), an investable index of SPIKES futures contracts.[16] The Fund will seek to track the Index over time, not just for a single day. The Index is intended to reflect the returns that are potentially available through an unleveraged investment in a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (''SPIKES Index'').[17]

The Index is comprised solely of SPIKES futures contracts.[18] The Index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91952 (May 20, 2021), 86 FR 28410. The comment letter received on the proposed rule change is available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2021-29/srnysearca202129.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92321, 86 FR 36173 (July 8, 2021).

[6] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2021-29/srnysearca202129.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 92650, 86 FR 46287 (August 18, 2021).

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 93574, 86 FR 64975 (November 19, 2021). The Commission designated January 21, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change.

[11] Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, creation and redemption procedures, and portfolio holdings can be found in Amendment No. 1, *supra* note 6.

[12] The Fund has filed a registration statement on Form S–1 under the Securities Act of 1933, dated May 25, 2021 (''Registration Statement''). The Registration Statement for the Fund is not yet effective and the Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

[13] Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[14] The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new sponsor becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[15] The Sub-Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[16] The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as ''T3 Index'' or ''Index Sponsor''). The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition of and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Index is calculated and published by Solactive AG, which is not affiliated with T3 Index.

[17] The Exchange states that the SPIKES Index is a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF Trust (''SPY'') over 30 days in the future. SPY is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (''S&P 500''). The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES Index is a theoretical calculation and cannot be traded on a spot basis. T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained and published by Miami International Securities Exchange, LLC via the Options Price Reporting Authority.

[18] According to the Exchange, SPIKES futures contracts were launched for trading by the Minneapolis Grain Exchange, LLC (''MGEX'') on

employs rules for selecting the SPIKES futures contracts comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement [19] program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month.

The Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances (described below), the Fund may also invest in futures contracts and swap contracts (''VIX Related Positions'') on the Cboe Volatility Index (''VIX'').[20] The Exchange states that the VIX is an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Sponsor or Sub-Adviser determines the type, quantity and mix of investments that the Sponsor or Sub-Adviser believes, in combination, should provide exposure to the Index to seek investment results equal to the performance of the Index. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures contracts, or if the market for a specific futures contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash), or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell SPIKES futures contracts (such as during periods of market volatility or illiquidity, or when trading in SPY is halted), the Sponsor or Sub-Adviser may cause the Fund to invest in VIX Related Positions. The Sponsor expects the Fund's positions in VIX Related Positions to consist primarily of VIX futures contracts, which are traded on the Cboe Futures Exchange. However, in the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor or Sub-Adviser deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.[21] The Fund will also hold cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, as well as the comment received, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Sponsor submitted a comment in support of the proposed rule change.[24] The Sponsor states that the Fund employs no leverage and only seeks to track the performance of the Index.[25] The Sponsor states that because the Fund will likely be net buying SPIKES futures contracts when the stock market is steady or rising, and market volatility is steady or declining, and net selling SPIKES futures contracts when the stock market declines and market volatility is rising, the Fund is likely a supplier of liquidity, which is a desirable characteristic in an environment where liquidity is in high demand but short supply.[26] Further, the Sponsor asserts approval of the proposal would increase competition in the market and provide a lower cost hedge against the effects of volatility than buying futures contracts.[27]

The proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. Specifically, the Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated and disseminated daily and will be made available to all market participants at the same time. Each day before 9:30 a.m., E.T., the daily holdings of the Fund will be available on the Fund's website, *www.convexityshares.com,* which will be publicly accessible at no charge.[28] This website disclosure of the Fund's daily holdings will occur at approximately the same time as the disclosure by the Trust of the daily holdings to authorized participants, so that all market participants will be provided daily holdings information at approximately the same time, and the

December 14, 2020. While the SPIKES Index represents a measure of the expected 30-day volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

[19] According to the Exchange, a Trade at Settlement (''TAS'') transaction is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contracts month. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. *See* MGEX Rule 83.15 at *http://www.mgex.com/documents/20210318-Rulebook.pdf.*

[20] According to the Exchange, the VIX is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

[21] The Fund will attempt to limit counterparty risk in uncleared swap agreements by entering into such agreements only with counterparties the Sponsor and Sub-Adviser believe are creditworthy and by limiting the Fund's exposure to each counterparty. The Exchange represents that the Sponsor and Sub-Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* letter from Eric Simanek, Partner, Sullivan & Worcester LLP, on behalf of the Sponsor, to Vanessa Countryman, Secretary, Commission, dated September 8, 2021.

[25] *See id.* at 2.

[26] *See id.* at 9.

[27] *See id.* at 8–10.

[28] The daily website disclosure of portfolio holdings will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of a swap, the type of swap, its notional value and the underlying instrument, index or asset on which the swap is based, (iii) the market value of each investment held by the Fund, (iv) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (v) the amount of cash held in the Fund's portfolio.

same holdings information will be provided on the public website as in electronic files provided to authorized participants. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. As required by NYSE Arca Rule 8.200–E, Commentary .02, an updated Intraday Fund Value (''IFV'') will be calculated and widely disseminated by one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session (9:30 a.m., E.T., to 4:00 p.m., E.T.). The IFV will be readily available from the Fund's website, automated quotation systems, published or other public sources, or major market data vendors' website or on-line information services. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. The level of the Index will be published at least every 15 seconds, both in real time from 9:30 a.m. to 4 p.m., E.T., and at the close of trading on each business day by Bloomberg and Reuters. The Fund's website will also provide information regarding the SPIKES futures contracts constituting the Index and the Index methodology. In addition, the level of the SPIKES Index and the VIX is available from Bloomberg and Reuters.

Complete real-time data for SPIKES futures contracts, which trade on MGEX, is available by subscription through on-line information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. Price information regarding cleared VIX swap contracts is available from major market data vendors and price information for non-exchange-traded VIX swap contracts may be obtained from brokers and dealers who make markets in such instruments. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors.

The Exchange's rules regarding trading halts further help to ensure the maintenance of fair and orderly markets for the Shares, which is consistent with the protection of investors and the public interest. Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E (Trading Halts Due to Extraordinary Market Volatility) have been reached. The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares or disclosure of the Fund's daily holdings is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV and the Fund's daily holdings is available to all market participants. NYSE Arca Rule 8.200–E, Commentary .02, enumerates additional circumstances under which the Exchange will consider the suspension of trading in and will commence delisting proceedings for the Shares.

The Exchange's proposal is designed to safeguard material non-public information relating to the Fund's portfolio. Specifically, as the Exchange states, neither the Sponsor nor the Sub-Adviser is registered as a broker-dealer or affiliated with a broker-dealer. In the event that (a) either the Sponsor or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor or sub-adviser is registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or personnel of the broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. Moreover, trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit Holders (''ETP Holders'') acting as registered Market Makers [29] in Trust Issued Receipts to facilitate surveillance. In addition, the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

Furthermore, the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments with other markets and entities that are members of the Intermarket Surveillance Group (''ISG''). In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA''). All futures contracts in which the Fund invests shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA. The Exchange states that trading in the Shares will be subject to existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange has demonstrated there is an appropriate regulatory framework to support listing and trading of the Shares, including trading rules, surveillance, and listing standards. Moreover, the trading of the Shares on the Exchange will be subject to the Exchange's and other rules listed below. Specifically:

(1) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities;

(2) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E;

(3) Pursuant to NYSEArca Rule 8.200–E(a), all statements and representations made in the filing regarding (a) the description of the Index, portfolio, or reference asset, (b) limitations on Index or portfolio holdings or reference assets, or (c) the applicability of Exchange

[29] As defined in NYSE Arca Rule 1.1(z) the term ''Market Maker'' means an ETP Holder that acts as a Market Maker pursuant to NYSE Arca Rule 7–E.

listing rules specified in the filing will constitute continued listing requirements for the Shares. The issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor [30] for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

(4) The Exchange has the appropriate rules to facilitate transactions in the Shares during all trading sessions;

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares; [31]

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act; [32] and

(7) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act [33] and the rules and regulations thereunder applicable to a national securities exchange.

[30] Certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will ''surveil'' for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that ''monitor'' and ''surveil'' both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view ''monitor'' as a more or less stringent obligation than ''surveil'' with respect to the continued listing requirements.

[31] The Exchange states that the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Units and Redemption Units (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

[32] 17 CFR 240.10A–3.

[33] 15 U.S.C. 78f(b)(5).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–NYSEArca–2021–29), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01562 Filed 1–26–22; 8:45 am]

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[34] *Id.*

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–149, OMB Control No. 3235–0130]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17Ad–2(c), (d), and (h).

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad–2(c), (d), and (h), (17 CFR 240.17Ad–2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad–2(c),(d) and (h) enumerates the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

The Commission receives approximately 3 notices a year pursuant to Rule 17Ad–2(c), (d), and (h). The estimated annual time burden of these filings on respondents is minimal in view of: (a) The readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); and (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length). In light of the above, and based on the experience of the staff regarding the notices, the Commission staff estimates that, on average, most notices require approximately one-half hour to prepare. Thus, the Commission staff estimates that the industry-wide total time burden is approximately 1.5 hours per year.

The retention period for the recordkeeping requirement under Rule 17Ad–2(c), (d), and (h) is not less than two years following the date the notice is submitted. The recordkeeping requirement under this rule is mandatory to assist the Commission in monitoring transfer agents who fail to meet the minimum performance standards set by the Commission rule. This rule does not involve the collection of confidential information. A transfer agent is not required to file under the rule unless it does not meet the minimum performance standards for turnaround, processing or forwarding items received for transfer during a month.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01614 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–224, OMB Control No. 3235–0217]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 17e–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information described below.

Rule 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') deems a remuneration as ''not exceeding the usual and customary broker's commission'' for purposes of Section 17(e)(2)(A) of the Act (15 U.S.C. 80a–17(e)(2)(A)) if, among other things, a registered investment company's (''fund's'') board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is reasonable and fair compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures (''review requirement''). Rule 17e–1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board (''recordkeeping requirement''). The review and recordkeeping requirements under rule 17e–1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker's commission. Without the recordkeeping requirement, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e–1.

Based upon an analysis of fund filings on Form N–CEN, approximately 1,640 funds report reliance on rule 17e–1. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e–1 is approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e–1 to be approximately 82,000 hours.[1] We further estimate that, of these:

- 60 percent (49,200 hours) are spent by senior accountants, at an estimated hourly wage of $221,[2] for a total of approximately $10,873,200 per year;[3]
- 30 percent (24,600 hours) are spent by in-house attorneys at an estimated hourly wage of $425, for a total of approximately $10,455,000 per year;[4] and
- 10 percent (8,200) are spent by the funds' board of directors at an hourly cost of $4,770, for a total of approximately $39,114,000 per year.[5]

Based on these estimated wage rates, the total cost to the industry of the hour burden for complying with the review and recordkeeping requirements of rule 17e–1 is approximately $60,442,200.[6] The Commission staff estimates that there is no cost burden associated with the information collection requirement of rule 17e–1 other than this cost.

Estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e–1 is mandatory. The information provided under rule 17e–1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* 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.

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01624 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 1,604 funds × 50 hours per fund = 82,000 hours.

[2] The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figures are also based on published rates for senior accountants and in-house attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $221 and $425, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[3] 49,200 hours × $221 per hour = $10,873,200.

[4] 24,600 hours × $425 per hour = $10,455,000.

[5] 8,200 hours × $4,770 per hour = $39,114,000. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

[6] $10,873,200 + $10,455,000 + $39,114,000 = $60,442,200.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–247, OMB Control No. 3235–0259]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 19h–1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in

Rule 19h–1 (17 CFR 240.19h–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 19h–1 prescribes the form and content of notices and applications by self-regulatory organizations (''SROs'') regarding proposed admissions to, or continuances in, membership, participation or association with a member of any person subject to a statutory disqualification.

The Commission uses the information provided in the submissions filed pursuant to Rule 19h–1 to review decisions by SROs to permit the entry into or continuance in the securities business of persons who have committed serious misconduct. The filings submitted pursuant to the Rule also permit inclusion of an application to the Commission for consent to associate with a member of an SRO notwithstanding a Commission order barring such association.

The Commission reviews filings made pursuant to the Rule to ascertain whether it is in the public interest to permit the employment in the securities business of persons subject to statutory disqualification. The filings contain information that is essential to the staff's review and ultimate determination on whether an association or employment is in the public interest and consistent with investor protection.

It is estimated that approximately 20 respondents will make submissions pursuant to this Rule annually. With respect to submissions for Rule 19h–1(a) notices, and based upon past submissions, the staff estimates that respondents will make a total of 11 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(a) notices is 80 hours (for a total annual burden for all respondents in the amount of 17,600 hours). With respect to submissions for Rule 19h–1(a)(4) notifications, and based upon past submissions, the staff estimates that respondents will make a total of 9 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(a)(4) notifications is 80 hours (for a total annual burden for all respondents in the amount of 14,400 hours). With respect to submissions for Rule 19h–1(b), and based upon past submissions, the staff estimates that respondents will make a total of 28 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(b) is 13 hours (for a total annual burden for all respondents in the amount of 7,280 hours). With respect to submissions for Rule 19h–1(d), and based upon past submissions, the staff estimates that respondents will make a total of 5 submissions per year. The staff estimates that the average number of hours necessary to complete a submission pursuant to Rule 19h–1(d) is 80 hours (for a total annual burden for all respondents in the amount of 8,000 hours). The aggregate annual burden for all respondents is thus approximately 47,280 hours (17,600 +14,400 + 7,280 + 8,000).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: January 21, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01554 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94023; File No. SR–C2–2022–002]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule With Respect to Its FINRA Non-Member Processing Registration Fee

January 21, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2022 Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend its Fees Schedule with respect to its FINRA Non-Member Processing registration fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the FINRA Non-Member Processing fee to reflect adjustments to the FINRA registration fees. The applicable fee is collected and retained by FINRA via Web CRD[3] for the registration of employees of Exchange TPH organizations that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Fees Schedule and does not collect or retain this fee.

Today, under the Regulatory Fees section of the Fees Schedule are various fees collected and retained by FINRA via the Web CRD registration system,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

including certain general registration fees, fingerprint processing fees, and continuing education fees. Specifically, under the general registration fees is the FINRA Non-Member Processing Fee of $100 for all initial, transfer, relicense, or dual registration Form U–4 filings. Now, the Exchange proposes to increase the $100 fee to $125 for such filings. The proposed amendment is made in accordance with a recent FINRA rule change to adjust its fees.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase the $100 fee for each initial Form U–4 filed for the registration of a representative or principal to $125 in accordance with an adjustment to FINRA's fees.[8] The proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the $100 fee for each initial Form U–4 filed for the registration of a representative or principal to $125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U–4 filings. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that its proposal to increase the $100 fee for each initial Form U–4 filed for the registration of a representative or principal to $125 does not impose an undue burden on competition as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U–4 filings. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2022–002 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–C2–2022–002. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2022–002 and should be submitted on or before February 17, 2022.

[4] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA's Regulatory Mission).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *Supra* note 4.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01561 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–225, OMB Control No. 3235–0235]

Proposed Collection; Comment Request; Extension: Rule 17a–8

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–8 (17 CFR 270.17a–8) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–1 *et seq.*) is entitled ''Mergers of affiliated companies.'' Rule 17a–8 exempts certain mergers and similar business combinations (''mergers'') of affiliated registered investment companies (''funds'') from prohibitions under section 17(a) of the Act (15 U.S.C. 80a–17(a)) on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a–8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 384 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 2,688 hours.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be $15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be $100,000. The Commission staff estimates that each year approximately 59 funds hold shareholder votes that would not otherwise have held a shareholder vote. The total annual cost burden of meeting these requirements is estimated to be $5,900,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John R. Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 21, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01546 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–224, OMB Control No. 3235–0217]

Submission for OMB Review; Comment Request, Extension: Rule 17e–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information described below.

Rule 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') deems a remuneration as ''not exceeding the usual and customary broker's commission'' for purposes of Section 17(e)(2)(A) of the Act (15 U.S.C. 80a–17(e)(2)(A)) if, among other things, a registered investment company's (''fund's'') board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is reasonable and fair compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures (''review requirement''). Rule 17e–1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board (''recordkeeping requirement''). The review and

recordkeeping requirements under rule 17e–1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker's commission. Without the recordkeeping requirement, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e–1.

Based upon an analysis of fund filings on Form N–CEN, approximately 1,640 funds report reliance on rule 17e–1. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e–1 is approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e–1 to be approximately 82,000 hours.[1] We further estimate that, of these:

- 60 percent (49,200 hours) are spent by senior accountants, at an estimated hourly wage of $221,[2] for a total of approximately $10,873,200 per year;[3]
- 30 percent (24,600 hours) are spent by in-house attorneys at an estimated hourly wage of $425, for a total of approximately $10,455,000 per year;[4] and
- 10 percent (8,200) are spent by the funds' board of directors at an hourly cost of $4,770, for a total of approximately $39,114,000 per year.[5]

Based on these estimated wage rates, the total cost to the industry of the hour burden for complying with the review and recordkeeping requirements of rule 17e–1 is approximately $60,442,200.[6] The Commission staff estimates that there is no cost burden associated with the information collection requirement of rule 17e–1 other than this cost.

Estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e–1 is mandatory. The information provided under rule 17e–1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* 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.

Dated: January 24, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01612 Filed 1–26–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 1,604 funds × 50 hours per fund = 82,000 hours.

[2] The Commission's estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figures are also based on published rates for senior accountants and in-house attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of $221 and $425, respectively. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[3] 49,200 hours × $221 per hour = $10,873,200.

[4] 24,600 hours × $425 per hour = $10,455,000.

[5] 8,200 hours × $4,770 per hour = $39,114,000. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

[6] $10,873,200 + $10,455,000 + $39,114,000 = $60,442,200.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: U.S. Small Business Administration.

ACTION: 30-Day notice; request for comments.

SUMMARY: The Small Business Administration will submit the information collection described below 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. SBA published the required 60-day public comment notice in the **Federal Register** on December 2, 2021, and is publishing this notice to allow all interested members of the public an additional 30 days to provide comments on the collection of information.

DATES: Submit comments on or before March 2, 2022.

ADDRESSES: Written comments and recommendations for this information collection request should be submitted through ''*www.reginfo.gov/public/do/PRAMain.*'' Find this information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then selecting ''Only Show ICR for Public Comment.'' This information collection can be identified by the title and/or OMB Control Number identified below.

FOR FURTHER INFORMATION CONTACT: Adrienne Grierson, Program Manager, at *adrienne.grierson@sba.gov;* 202–205–6573, or Curtis B. Rich, Management Analyst, 202–205–7030; *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, authorized SBA to guarantee loans made by banks or other financial institutions under a new temporary 7(a) program titled the ''Paycheck Protection Program'' (''PPP'') to small businesses, certain non-profit organizations, veterans' organizations, Tribal business concerns, independent contractors and self-employed individuals adversely impacted by the Coronavirus Disease (COVID–19) Emergency. This authority initially expired on August 8, 2020. The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), Public Law 116–260, renewed SBA's authority to make PPP loans until March 31, 2021, and added authority for second draw PPP loans under § 7(a)(37) of the Small Business Act. The program authority was further extended until June 30, 2021, by the PPP Extension Act of 2021, Public Law 117–6.

This information collection is currently approved for the PPP Loan Program under the emergency procedures authorized by 5 U.S.C. 3507(j) and 5 CFR 1320.13. This approval will expire on January 31, 2022. Although SBA's PPP program authority has expired, this information collection is still needed for the following reasons: (1) PPP borrowers may apply for forgiveness of their loans up to the date of loan maturity, which may be as late as 2026; (2) SBA may

review a PPP loan at any time; and (3) pending litigation may require the collection of information. Therefore, as required by the Paperwork Reduction Act, SBA is publishing this notice as a prerequisite to seeking OMB's approval to ensure this information collection is available for use beyond January 31, 2022. As part of that process, SBA is requesting comments from the public on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: Paycheck Protection Loan Program Borrower Information Form and Lender's Application for Loan Guaranty.

OMB Control Number: 3245–0407.

(I) SBA Form 2483—Paycheck Protection Program Borrower Application Form.

Description of Respondents: PPP loan applicants.
Estimated Number of Respondents: 9,279,434.
Estimated Annual Responses: 9,279,434.
Estimated Annual Hour Burden: 1,237,258.

(II) SBA Form 2483–C—Paycheck Protection Program Borrower Application From for Schedule C Filers Using Gross Income.

Description of Respondents: PPP loan applicants.
Estimated Number of Respondents: 239,160.
Estimated Annual Responses: 239,160.
Estimated Annual Hour Burden: 31,888.

(III) SBA Form 2484—Paycheck Protection Program Lender's Application—Paycheck Protection Program Loan Guaranty.

Description of Respondents: PPP lenders.
Estimated Number of Respondents: 5,467.
Estimated Annual Responses: 9,218,594.
Estimated Annual Hour Burden: 3,841,081.

(IV) SBA Form 3506—CARES Act Section 1102 Lender Agreement.

Description of Respondents: PPP lenders.
Estimated Number of Respondents: 775.
Estimated Annual Responses: 775.
Estimated Annual Hour Burden: 129.

(V) SBA Form 3507—CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lenders.

Description of Respondents: PPP lenders.
Estimated Number of Respondents: 169.
Estimated Annual Responses: 169.
Estimated Annual Hour Burden: 70.

(VI) SBA Form 3508—Paycheck Protection Program—Loan Forgiveness Application.

Description of Respondents: PPP borrowers.
Estimated Number of Respondents: 591,180.
Estimated Annual Responses: 591,180.
Estimated Annual Hour Burden: 1,773,539.

(VII) SBA Form 3508EZ—Paycheck Protection Program—PPP Loan Forgiveness Application Form EZ.

Description of Respondents: PPP borrowers.
Estimated Number of Respondents: 1,773,539.
Estimated Annual Responses: 1,773,539.
Estimated Annual Hour Burden: 591,180.

(VIII) SBA Form 3508S, Paycheck Protection Program—PPP Loan Forgiveness Application Form 3508S.

Description of Respondents: PPP borrowers.
Estimated Number of Respondents: 9,458,875.
Estimated Annual Responses: 9,458,875.
Estimated Annual Hour Burden: 2,364,719.

(IX) SBA Form 3508D—Paycheck Protection Program Borrower's Disclosure of Certain Controlling Interests.

Description of Respondents: PPP borrowers.
Estimated Number of Respondents: 350.
Estimated Annual Responses: 350.
Estimated Annual Hour Burden: 29.

(X) [Form Number N/A] Lender Reporting Requirements Concerning Requests for Loan Forgiveness.

Description of Respondents: PPP lenders.
Estimated Number of Respondents: 5,467.
Estimated Annual Responses: 11,824,000.
Estimated Annual Hour Burden: 2,107,121.

(XI) [Form Number N/A] Lender Reporting Requirements for SBA Loan Reviews.

Description of Respondents: PPP lenders.
Estimated Number of Respondents: 5,467.
Estimated Annual Responses: 2,000,000.
Estimated Annual Hour Burden: 1,000,000.

Curtis B. Rich,
Management Analyst.

[FR Doc. 2022–01642 Filed 1–26–22; 8:45 am]
BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11640]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Gilardi: Tappeto-Natura" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Gilardi: Tappeto-Natura'' at the Magazzino Italian Art Foundation, Cold Spring, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28,

2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–01576 Filed 1–26–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11636]

U.S. Advisory Commission on Public Diplomacy Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy (ACPD) will hold a virtual public meeting from 12:00 p.m. until 1:30 p.m., Thursday, February 24, 2022. In addition to previewing the *2021 Comprehensive Annual Report on Public Diplomacy and International Broadcasting,* the meeting will feature a panel of Public Affairs Officers at U.S. Embassies in Africa, South Central Asia, and the Western Hemisphere. Building on the *2021 Comprehensive Annual Report* findings, panelists will address current challenges to and opportunities for the practice of public diplomacy in the field.

This meeting is open to the public, including the media and members and staff of governmental and non-governmental organizations. To obtain the web conference link and password, please register here: *https://www.eventbrite.com/e/field-perspectives-on-the-practice-of-public-diplomacy-tickets-247362085657.* To request reasonable accommodation, please email ACPD Program Assistant Kristy Zamary at *ZamaryKK@state.gov.* Please send any request for reasonable accommodation no later than February 11, 2022. Requests received after that date will be considered but might not be possible to fulfill. Attendees should plan to enter the web conference waiting room by 11:50 a.m. to allow for a prompt start.

Since 1948, the ACPD has been charged with appraising activities intended to understand, inform, and influence foreign publics and to increase the understanding of, and support for, these same activities. The ACPD conducts research that provides honest assessments of public diplomacy efforts, and disseminates findings through reports, white papers, and other publications. It also holds public symposiums that generate informed discussions on public diplomacy issues and events. The Commission reports to the President, Secretary of State, and Congress and is supported by the Office of the Under Secretary of State for Public Diplomacy and Public Affairs.

For more information on the U.S. Advisory Commission on Public Diplomacy, please visit *https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/united-states-advisory-commission-on-public-diplomacy/,* or contact Executive Director Vivian S. Walker at *WalkerVS@state.gov* or Senior Advisor Deneyse Kirkpatrick at *kirkpatrickda2@state.gov.*

Vivian S. Walker,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 2022–01631 Filed 1–26–22; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 11639]

Notice of Determinations; Culturally Significant Object Being Imported for Conservation, Scientific Research, and Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object, entitled ''A Banquet Still Life'' by Jan Davidsz. de Heem, being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary conservation, scientific research, and exhibition or display at The J. Paul Getty Museum at the Getty Center, Los Angeles, California, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary conservation, scientific research, and exhibition or display within the United States as aforementioned are in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–01578 Filed 1–26–22; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36574]

Missouri Eastern Railroad, LLC—Change in Operator Exemption With Interchange Commitment—Union Pacific Railroad Company

Missouri Eastern Railroad, LLC (MER), a Class III rail carrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to assume operation of approximately 8.65 miles of rail line between Vigus, Mo. (milepost 19.0) and Rock Island Jct., Mo. (milepost 10.35), along with connected sidings and ancillary tracks (collectively, the Line).[1] Union Pacific Railroad Company (UP) owns the Line, and Central Midland Railway Company (CMRC) currently operates the Line under a lease.[2]

According to the verified notice, MER has entered into an agreement with CMRC—with UP's consent—under which CMRC will assign its interest in the Lease to MER, and under which MER will replace CMRC as the common carrier rail service provider on the Line subject to the same terms, conditions, and restrictions.

As required under 49 CFR 1150.43(h)(1), MER certifies in its verified notice that the Lease contains an interchange commitment that applies to traffic that originates or terminates on the Line. Under the interchange commitment, the annual rent due to UP depends on the percentage of rail traffic originating or terminating on the Line that is interchanged with UP via the Terminal Railroad Association of St.

[1] MER recently acquired incidental overhead trackage rights over the Line as part of its acquisition of a connecting line. *See Mo. E. R.R.—Acquis. & Change of Operator Exemption—V & S Ry.,* FD 36550 (STB served Nov. 10, 2021).

[2] CMRC has been authorized to lease and operate the Line since 2003. *See Cent. Midland Ry.—Lease & Operation Exemption—Union Pac. R.R.,* FD 34308 (STB served Jan. 27, 2003). In 2016, it was authorized to continue to lease and operate the Line under a renewed lease agreement (Lease). *See Cent. Midland Ry.—Renewal of Lease Exemption with Interchange Commitment—Union Pac. R.R. Lackland Sub-Div.,* FD 35989 (STB served Jan. 29, 2016).

Louis.[3] MER has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

MER certifies that its projected annual revenues as a result of the transaction will not exceed $5 million and will not result in the creation of a Class I or Class II rail carrier.

Under 49 CFR 1150.42(b), a change in operator exemption requires that notice be given to shippers. MER certifies that it has provided notice of the proposed transaction and interchange commitment to shippers that currently use or have used the Line in the last two years.

The transaction may be consummated on or after February 10, 2022, the effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 3, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36574, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on MER's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to MER, this action is categorically excluded from historic preservation reporting requirements under 49 CFR 1105.8(b) and from environmental reporting requirements under 49 CFR 1105.6(c).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 24, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2022–01625 Filed 1–26–22; 8:45 am]

BILLING CODE 4915–01–P

[3] A copy of the Lease containing the interchange commitment was filed under seal with the verified notice. *See* 49 CFR 1150.43(h)(1).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0083]

Agency Information Collection Activities: Request for Comments; Substantive Change to Multiple Previously Approved Collections: Aircraft Registration, Recording of Aircraft Conveyances and Security Documents, FAA Entry Point Filing Form—International Registry, and Dealer's Aircraft Registration Certificate Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval of a substantive change to multiple previously approved information collections. The FAA Reauthorization Act of 2018, Section 546, requires the implementation of systems allowing a member of the public to submit any information or form to the Registry and conduct any transaction with the Registry by electronic or other remote means. In response to this requirement, the FAA created Civil Aviation Registry Electronic Services (CARES) and intends to change its current information collection to accommodate electronic registry applications.

DATES: Written comments should be submitted by March 28, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: https://www.regulations.gov (Enter docket number into search field)

By mail: Kevin West, Acting Manager, Aircraft Registration Branch, AFB–710, PO Box 25504, Oklahoma City OK 73125

By fax: 405–954–8068

FOR FURTHER INFORMATION CONTACT: Bonnie Lefko by email at: *bonnie.lefko@faa.gov.* Include docket number in the subject line of the message. By phone at: 405–954–7461.

SUPPLEMENTARY INFORMATION: *Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Numbers: 2120–0042, 2120–0043, 2120–0697 and 2120–0024.

Titles: Aircraft Registration, Recording of Aircraft Conveyances and Security Documents, FAA Entry Point Filing Form—International Registry, and Dealer's Aircraft Registration Certificate Application.

Form Numbers: AC Forms: 8050–1; 8050–1B; 8050–2; 8050–4; 8050–5; 8050–41; 8050–88; 8050–88A; 8050–98; 8050–117; 8050–135.

Type of Review: Substantive Change to Previously Approved Collections:

(1) 2120–0042, Aircraft Registration Application, AC Form 8050–1
(2) 2120–0042, Aircraft Registration Renewal Application, AC Form 8050–1B
(3) 2120–0042, Aircraft Bill of Sale, AC Form 8050–2
(4) 2120–0042, Certificate of Repossession of Encumbered Aircraft, AC Form 8050–4
(5) 2120–0024, Dealer's Aircraft Registration Certificate Application, AC Form 8050–5
(6) 2120–0043, Notice of Recordation—Aircraft Security Conveyance, AC Form 8050–41
(7) 2120–0042, Affidavit of Ownership, AC Form 8050–88
(8) 2120–0042, Affidavit of Ownership Light-Sport Aircraft, AC Form 8050–88A
(9) 2120–0042, Aircraft Security Agreement, AC Form 8050–98
(10) 2120–0042, Flight Hours for Corporations, AC Form 8050–117
(11) 2120–0697, International Registry Entry Form, AC Form 8050–135

Background: Public Law 103–272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is used by the FAA to register an aircraft and record a security interest in a registered aircraft.

The FAA Reauthorization Act of 2018 (Pub. L. 115–254 or The Act), Section 546, ''FAA Civil Aviation Registry Upgrade'', requires:

1. The digitization of non-digital Registry information, including paper documents, microfilm images, and photographs, from an analog or non-digital format to a digital format;

2. The digitalization of Registry manual and paper-based processes,

business operations, and functions by leveraging digital technologies and a broader use of digitized data;

3. The implementation of systems allowing a member of the public to submit any information or form to the Registry and conduct any transaction with the Registry by electronic or other remote means; and

4. Allowing more efficient, broader, and remote access to the Registry.

In response to The Act, the FAA has initiated the creation of Civil Aviation Registry Electronic Services (CARES). CARES is intended to modernize and streamline the way these forms are submitted by providing online access to users wishing to submit information electronically. Public users will continue to have the paper-based submission option by providing the same information that is accepted today, along with the addition of an email address.

To accommodate the public user with these web-based services, a dedicated online user account must first be established. CARES will leverage an existing FAA Single Sign-On (SSO) capability known as MyAccess. MyAccess will be used to generate online public user accounts, and also serve as part of the user account sign-on and authentication process after a user account has been created.

As an alternative to the web-based services, public users will still be permitted to send in paper forms directly to the Registry office via conventional mail services. These paper forms will be revised to collect the email address of the public user to help streamline processing of the public users' request. The modified paper forms will supersede all prior forms.

Respondents: Approximately 162,176 applicants for 2120–0042; 3,670 applicants for 2120–0024; 22,370 applicants for 2120–0043; and 14,360 applicants for 2120–0697.

Frequency: Information is collected on occasion for 2120–0042, 2120–0043 and 2120–0697; annually to maintain a certificate for 2120–0024.

Estimated Average Burden per Response: 32 minutes for 2120–0042; 45 minutes for 2120–0024; 1 hour for 2120–0043; and 30 minutes for 2120–0697.

Estimated Total Annual Burden: 135,457 hours for 2120–0042; 2753 hours for 2120–0024; 22,370 hours for 2120–0043; and 7,180 hours for 2120–0697.

Issued in Oklahoma City, OK, on January 21 2022.

Bonnie Lefko,

Program Analyst, Civil Aviation Registry, Aircraft Registration Branch, AFB–710.

[FR Doc. 2022–01534 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2021–0006–N–17]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On November 8, 2021, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before February 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer at email: *Hodan.Wells@dot.gov* or telephone: (202) 493–0440.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On November 8, 2021, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 86 FR 61830. FRA received no comments related to the proposed collection of information.

Before OMB decides whether to approve the proposed collection of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(a); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Passenger Equipment Safety Standards.

OMB Control Number: 2130–0544.

Abstract: The information collection under 49 CFR part 238 is used by FRA to promote passenger train safety by ensuring requirements are met for railroad equipment design and performance, fire safety, emergency systems, inspection, testing, and maintenance, and other provisions for the safe operation of railroad passenger equipment. For instance, the information collected from daily inspections is used to detect and correct equipment problems in order to prevent, to the extent that they can be prevented, collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or to the general public.

Upon detailed review of part 238, FRA made several adjustments to its estimated paperwork burdens in this ICR extension, as described in the 60-day notice published on November 8,

2021.[1] FRA determined that many estimated paperwork burdens were either outdated or accounted for in other regulatory sections. Additionally, FRA found the associated burdens related to train equipment inspection and testing, as well as employee training and job briefings have been addressed previously when FRA calculated the economic costs of the regulation. FRA also notes below where it anticipates zero railroad submissions during this 3-year ICR period.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 34 railroads and manufacturers.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 4,860,940.

Total Estimated Annual Burden: 95,946 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent (Total Cost Equivalent): $7,173,483.[2]

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2022–01603 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–06–P

[1] The adjustments to the estimated paperwork burdens are also described within this ICR's Supporting Statement available for public review after this 30-day notice is published in the **Federal Register** at *https://www.reginfo.gov/public/.*

[2] FRA updated the total cost equivalent from $7,149,477 to $7,173,483 to correct a previous calculation error in the 60-day notice.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0123]

Pipeline Safety: Informational Webinar Addressing Inspection of Operators' Plans To Eliminate Hazardous Leaks, Minimize Releases of Methane, and Remediate or Replace Leak-Prone Pipe

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public informational webinar.

SUMMARY: This notice announces a public informational webinar on the scope of Section 114 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020). The webinar will also cover PHMSA and state inspection plans to ensure compliance of operators' inspection and maintenance procedures to eliminate hazardous leaks, minimizes releases of methane (the predominant component of natural gas), and the replacement or remediation of facilities known to leak.

DATES: The informational public webinar will be held on February 17, 2022, from 10:30 a.m. until 6:00 p.m., ET. Members of the public who wish to attend this webinar must register no later than February 11, 2022. Individuals requiring accommodations, such as sign language interpretation or other aids, are asked to notify PHMSA no later than February 11, 2022. For additional information, please see the **ADDRESSES** section of this notice.

ADDRESSES: The informational public webinar will be held virtually. The agenda and instructions on how to attend will be available on the meeting website at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mkey=0913558304&mtg=159* once they are finalized.

Presentations from the informational public webinar will be available on the meeting website no later than 5 business days following the webinar.

FOR FURTHER INFORMATION CONTACT: Byron Coy, Senior Technical Advisor, Program Development Division, by phone at (609) 771–7810 or by email at *byron.coy@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The mission of PHMSA is to protect people and the environment by advancing the safe transportation of energy products and other hazardous materials that are essential to our daily lives. PHMSA's mission includes prevention of the release of natural gas that can release methane into the atmosphere. According to the U.S. Environmental Protection Agency, methane is a potent greenhouse gas with a global warming potential (GWP) of 28–36 times greater than that of carbon dioxide over a 100-year period. Compared to carbon dioxide, methane gas has a stronger warming effect, but a shorter lifespan in the atmosphere. Due to the high GWP, minimizing releases of methane (both fugitive and vented emissions) has near-term benefits to mitigating the consequences of climate change. Likewise, remediation or replacement of pipeline facilities that are known to leak based on material, design, or past operating and maintenance history can result in enhanced public safety, environmental protection, and economic benefits.

The PIPES Act of 2020 (Pub. L. 116–260, Division R) was signed into law on December 27, 2020. This law contains several provisions that specifically address the elimination of hazardous leaks and minimization of releases of natural gas from pipeline facilities. Section 114(b) of the PIPES Act of 2020 contains self-executing provisions that apply directly to pipeline operators. This section requires each pipeline operator to update its inspection and maintenance plan required under 49 U.S.C. 60108(a) no later than one year after the date of enactment of the PIPES Act of 2020 (*i.e.,* by December 27, 2021) to address the elimination of hazardous leaks and minimization of releases of natural gas (including, and not limited to, intentional venting during normal operations and maintenance) from the operators' pipeline facilities (49 U.S.C. 60108(a)(2)(D)). The PIPES Act of 2020 also requires those plans to address the replacement or remediation of pipelines that are known to leak due to their material (including cast iron, unprotected steel, wrought iron, and historic plastics with known issues), design, or past operating and maintenance history (49 U.S.C. 60108(a)(2)(E)). In addition, 49 U.S.C. 60108(a)(2) requires that operators continue updating these plans to meet the requirements of any future regulations related to leak detection and repair that are promulgated under 49 U.S.C. 60102(q). Pursuant to the PIPES Act of 2020, operators must have completed updates to their plans by December 27, 2021, and PHMSA (along with our state partners) is required to inspect these plans in 2022.

The PIPES Act of 2020 further directs the Comptroller General of the United States to conduct a study to evaluate the procedures used by PHMSA and states in reviewing plans prepared by pipeline operators under section 60108(a) and provide recommendations for how to further minimize releases of methane from pipeline facilities without compromising pipeline safety. No later than 90 days after the date the Comptroller General's report is published, the Secretary of Transportation is required to submit to Congress a report that includes a response to the results of the study and the recommendations contained in the report.

On June 10, 2021, PHMSA published an advisory bulletin in the **Federal Register** titled ''Statutory Mandate to

Update Inspection and Maintenance Plans to Address Eliminating Hazardous Leaks and Minimizing Releases of Natural Gas from Pipeline Facilities'' (86 FR 31002) reminding pipeline operators of their obligation to comply with Section 114 of the PIPES Act of 2020 by December 27, 2021. That advisory bulletin reminded owners and operators of pipeline facilities that the PIPES Act of 2020 requires operators to update their inspection and maintenance plans to identify procedures to prevent and mitigate both vented/intentional and fugitive/unintentional pipeline emissions. Vented emissions can occur during repairs, maintenance, or operations of pressure relief systems, or other controlled activities. Fugitive emissions include leaks from mains or service lines, meters, or excavation damage, as well as other accidental releases.

II. Public Webinar Details and Agenda

The public informational webinar will take place on February 17, 2022. During the webinar, PHMSA will review the scope and requirements of Section 114 and plans for PHMSA and state inspection of the requirements. Following opening remarks, the webinar will address the following topics: (1) Key elements of Section 114; (2) Significant sources of natural gas (primarily methane) emissions from pipelines; (3) Discussion of which types of pipeline facilities must comply with each portion of Section 114; (4) PHMSA and state inspections, including reviews of a pipeline operator's programs and procedures to reduce methane emissions; (5) Inspection topics related to methane reduction and leak-prone pipes; (6) General review of how operators' programs and procedures will be inspected; and (7) The timelines for actions required by Section 114.

III. Public Participation

The webinar will be open to the public. Members of the public who wish to attend must register on the meeting website and include their names and organization affiliation. PHMSA is committed to providing all participants with equal access to these meetings. If you need special accommodations, please contact Byron Coy by phone at (609) 771–7810 or via email at *byron.coy@dot.gov.*

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notification regarding last minute changes that impact a previously announced meeting. Therefore, individuals should check the meeting website listed in the **ADDRESSES** section of this notice or contact Byron Coy by phone at (609) 771–7810 or via email at *byron.coy@dot.gov* regarding any possible changes.

Issued in Washington, DC on January 24, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–01596 Filed 1–26–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more individuals and entities that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On January 21, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

BILLING CODE 4810–AL–P

1. AYAD, Adnan (a.k.a. ADNAN, Ali Ayad; a.k.a. 'IYAD, Adnan 'Ali (Arabic: عدنان علي عياد)), Lebanon; Germany; Morocco; Ethiopia; Iraq; Ghana; Nigeria; Turkey; DOB 10 Mar 1963; alt. DOB 01 Jan 1963; nationality Lebanon; alt. nationality Germany; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport LR0435095 (Lebanon); alt. Passport C3T81VJJX (Germany) (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. AYAD, Jihad Adnan (Arabic: جهاد عدنان عياد) (a.k.a. AYAD, Jaden; a.k.a. AYAD, Jehad), Zambia; DOB 26 Nov 1988; nationality Germany; alt. nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport C480ZRLP5 (Germany) expires 02 Apr 2027; National ID No. 2865885 (Lebanon) (individual) [SDGT] (Linked To: HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. DIAB, Ali Adel (Arabic: علي عادل دياب), Kabompo Street, Plot N 15, Apt N11, Kalundu, Lusaka, Zambia; DOB 15 Dec 1988; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 1011592 (Lebanon) expires 04 Dec 2019 (individual) [SDGT] (Linked To: HAMER AND NAIL CONSTRUCTION LIMITED).

   Designated pursuant to section 1(a)(iii)(E) of E.O. 13224, as amended, for being a leader or official of Hamer and Nail Construction Limited, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. AL AMIR CO. FOR ENGINEERING, CONSTRUCTION AND GENERAL TRADE SARL (a.k.a. AL' AMIR DIAB AND AYAD ENGINEERING AND CONSTRUCTION; a.k.a. AL' AMIR FOR CONSTRUCTING AND BUILDING; a.k.a. PRINCE ENGINEERING, CONSTRUCTION, AND GENERAL TRADING; a.k.a. "ALAMIR"; a.k.a. "AL-AMIR CO."; a.k.a. "AL-AMIR COMPANY"; a.k.a. "AL-AMIR PROJECT"), Alamir Center — 2nd Floor, Chiah, Beirut, Lebanon; Website www.alamir-lb.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Business Registration Number 67796 (Lebanon) [SDGT] (Linked To: DIAB, Adel; Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned in aggregate, directly or indirectly, fifty percent or more by Adel Diab and Adnan Ayad, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. GOLDEN GROUP SAL OFF SHORE, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 26 Aug 2014; Business Registration Number 1807712 (Lebanon) [SDGT] (Linked To: DIAB, Adel; Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned in aggregate, directly or indirectly, fifty percent or more by Adel Diab and Adnan Ayad, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. GOLDEN GROUP TRADING SARL, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 May 2014; Business Registration Number 1018316 (Lebanon) [SDGT] (Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Adnan Ayad, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. HAMER AND NAIL CONSTRUCTION LIMITED, 1st Floor Anchor House, Cairo Road, Town Centre, Lusaka, Lusaka Province, Zambia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 21 Mar 2017; Business Registration Number 120170002264 (Zambia) [SDGT] (Linked To: DIAB, Adel; Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Adnan Ayad, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. HAMIDCO INVESTMENT LIMITED, Plot No. 5831, Kalundu, Lusaka, Lusaka Province, Zambia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 29 May 2014; Business Registration Number 120140122806 (Zambia) [SDGT] (Linked To: AYAD, Adnan).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Adnan Ayad, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. INSHAAT CO SARL, Baabda, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 08 Feb 2005; Business Registration Number 2005265 (Lebanon) [SDGT] (Linked To: DIAB, Adel; Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned in aggregate, directly or indirectly, fifty percent or more by Adel Diab and Adnan Ayad, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. JAMMOUL AND AYAD FOR INDUSTRY AND TRADE (a.k.a. BAKERIES AND PASTRIES JAMMOUL SARL; a.k.a. JAMOOL AND AYYAD COMPANY FOR INDUSTRY AND TRADE), Building 1046, Jiyeh, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Apr 2003; Business Registration Number 2000776 (Lebanon) [SDGT] (Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Adnan Ayad, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. LAND METICS SARL (a.k.a. LANDMATICS LLC; a.k.a. LANDMATICS SARL), Building 380, Hamra Street, Ras Beirut Sector, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Sep 2011; Business Registration Number 1014202 (Lebanon) [SDGT] (Linked To: DIAB, Adel; Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned in aggregate, directly or indirectly, fifty percent or more by Adel Diab and Adnan Ayad, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. LANDMETICS SAL OFF-SHORE (a.k.a. LANDMETICS OFF SHORE), Jalloul Property, Hamra Street, Hamra, Beirut, Lebanon; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 12 Sep 2011; Business Registration Number 1805433 (Lebanon) [SDGT] (Linked To: DIAB, Adel; Linked To: AYAD, Adnan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned in aggregate, directly or indirectly, fifty percent or more by Adel Diab and Adnan Ayad, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. TOP FASHION GMBH KONFEKTIONSBUGELEI (Latin: TOP FASHION GMBH KONFEKTIONSBÜGELEI), Markische Allee, 15, Grossbeeren, Brandenburg 14979, Germany; Website www.topfashion-online.de; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Mar 1997; Business Registration Number 14467B11081P (Germany) issued 06 Aug 1997 [SDGT] (Linked To: AYAD, Adnan).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, directly or indirectly, Adnan Ayad, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: January 21, 2022.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–01542 Filed 1–26–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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 public is invited to submit comments on these requests.

DATES: Comments must be received on or before February 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Third-Party Disclosure Requirements in IRS Regulations.

OMB Control Number: 1545–1466.

Type of Review: Extension of a currently approved collection.

Description: Taxpayers must obtain third-party certification or documentation to avail themselves of certain credits, deductions or other benefits permitted by the Internal Revenue Code (IRC). Similarly, the receipt of other third-party information often provides a safe-harbor on which taxpayers may rely to avail themselves of certain credits, deductions or other benefits permitted by the IRC. Further, although taxpayers do not have to submit the documents or information to claim the credits, deductions, or tax benefits, they are required to maintain the documentation with their books and records, which facilitates the Internal Revenue Service (IRS) examination of the claimed credit, deduction, or tax benefit during any audit of taxpayer's return. The third parties required to provide this certification, documentation, or information generally collect the required information in the ordinary course of their business. Accordingly, while requiring third-parties to disclose this information is not a significant burden, it allows taxpayers to legitimately minimize their tax burden the by claiming credits, deductions, and other tax benefits that Congress has authorized and facilitates the IRS verification of the taxpayers' claims on audit.

Form Number: None.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions.

Estimated Number of Respondents: 130,714,403.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 130,723,849.

Estimated Time per Response: Varies. Average response time 15 minutes.

Estimated Total Annual Burden Hours: 33,931,417.

2. Title: Public Approval of Tax-Exempt Private Activity Bonds.

OMB Control Number: 1545–2185.

Type of Review: Revision of a currently approved collection.

Description: The collection of information in these final regulations is the requirement in Treasury Regulations section 1.147(f)–1 that certain information be contained in a public notice or public approval and, consequently, disclosed to the public. The information is required to meet the statutory public approval requirement provided in the Internal Revenue Code section 147(f).

Form Number: TD 9845.

Affected Public: State and local governments.

Estimated Number of Respondents: 2,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 2,000.

Estimated Time per Response: 1 hour 18 minutes.

Estimated Total Annual Burden Hours: 2,600.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 24, 2022.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–01648 Filed 1–26–22; 8:45 am]

BILLING CODE 4830–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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 public is invited to submit comments on these requests.

DATES: Comments must be received on or before February 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. Title: Change in Bond (Change of Surety).

OMB Control Number: 1513–0013.

Type of Review: Extension of a currently approved collection.

Description: The Internal Revenue Code (IRC), at 26 U.S.C. 5114, 5173, 5272, 5354, 5401, and 5711, requires certain alcohol and tobacco industry proprietors to post a bond as the Secretary of the Treasury (the Secretary) requires by regulation. The required bond ensures payment of alcohol and tobacco excise taxes by a surety if a proprietor defaults on those taxes. Changes in the terms of bonds are effectuated on form TTB F 5000.18, Change in Bond (Consent of Surety). Once executed by the proprietor and an approved surety company, the proprietor files the form with TTB, which retains it as long as the revised bond agreement remains in force. This collection is necessary to ensure the tax provisions of the IRC are appropriately applied.

Form: TTB F 5000.18.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 120.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 120.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 120 hours.

2. Title: Application for and Certification/Exemption of Label/Bottle Approval.

OMB Control Number: 1513–0020.

Type of Review: Extension of a currently approved collection.

Description: The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverages sold or introduced into interstate or foreign commerce be labeled in conformity with regulations issued by the Secretary. Under the FAA Act, such regulations are to prevent deception of the consumer, provide the consumer with ''adequate information'' as to the identity and quality of the product, and prohibit false or misleading statements, among other things. Further, under the FAA Act, prior to an alcohol beverage product's introduction into interstate or foreign commerce, the producer, bottler, or importer of the product must apply for and receive TTB approval of the product's label. For wines and distilled spirits, such respondents also may apply for exemption from label approval for products not sold or entered into interstate or foreign commerce. For distilled spirits, the TTB regulations also require approval of distinctive liquor bottles. Respondents use form TTB F 5100.31 or its electronic equivalent, COLAs Online, to request and obtain such approvals. If approved by TTB, the form also serves as a certificate of label approval (COLA), a certificate of exemption from label approval, or distinctive liquor bottle approval. This collection of information and its related form implement these statutory and regulatory provisions.

Form: TTB F 5100.31.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 12,500.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 205,000.

Estimated Time per Response: 31 minutes.

Estimated Total Annual Burden Hours: 105,917 hours.

3. Title: Claims for Drawback of Tax on Tobacco Products, Cigarette Papers, and Cigarette Tubes Exported from the United States.

OMB Control Number: 1513–0026.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5706 provides for the drawback (refund) of Federal excise taxes paid on tobacco products, and on cigarette papers and tubes, when such articles are subsequently exported in accordance with the bond and regulatory requirements prescribed by the Secretary. Under that authority, the TTB regulations in 27 CFR part 44 provide for drawback of excise taxes paid on such products shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States when the person who paid the tax files the prescribed claim and bond. The regulations require that respondents file such claims and certain supporting documentation using form TTB F 5620.7, while the required bond is filed using form TTB F 5200.17. In addition, respondents may file letterhead applications for relief from certain regulatory requirements regarding filing of supporting documentation showing export or loss. This collection ensures drawback is provided consistent with the statutory provisions.

Form: TTB F 5200.17 and TTB F 5620.7.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 13.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 13.

Estimated Time per Response: 1.385 hours.

Estimated Total Annual Burden Hours: 18 hours.

4. Title: Removals of Tobacco Products and Cigarette Papers and Tubes without Payment of Tax.

OMB Control Number: 1513–0027.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5704(b) provides that a manufacturer or export warehouse proprietor, in accordance with regulations prescribed by the Secretary, may remove tobacco products and cigarette papers and tubes, without payment of tax, for export or consumption beyond the jurisdiction of the internal revenue laws of the United States. That IRC section also provides that such persons may transfer such articles, without payment of tax, to the bonded premises of another such entity. In addition, the IRC at 26 U.S.C. 5722 requires such persons to make reports as required by regulation. Under those authorities, the TTB regulations in 27 CFR part 44 require tobacco product and cigarette paper and tube manufacturers and export warehouse proprietors to report such removals on form TTB F 5200.14. Alternatively, under the alternate procedure described in TTB Industry Circular 2004–3, respondents may submit a Monthly Summary Report of such removals if records maintained at the respondent's premises document the export of each removal. Under this information collection, respondents also submit letterhead notices to modify previously submitted information, and they submit letterhead applications to obtain authorization to use an alternative Monthly Summary Report procedure. The collected information

ensures the appropriate payment of tax under the IRC.

Form: TTB F 5200.14.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 300.

Frequency of Response: On occasion, Monthly.

Estimated Total Number of Annual Responses: 21,970.

Estimated Time per Response: 1 to 7 hours.

Estimated Total Annual Burden Hours: 27,730 hours.

5. Title: Claims—Alcohol, Tobacco, and Firearms Taxes.

OMB Control Number: 1513–0030.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5008, 5056, 5370, and 5705 authorizes the Secretary to provide for claims for taxpayer relief from excise taxes paid on distilled spirits, wine, beer, and tobacco products lost or destroyed by theft or disaster, voluntarily destroyed, or returned or withdrawn from the market. The IRC at 26 U.S.C. 5044 also allows for the refund of tax for wine returned to bond. In addition, the IRC at 26 U.S.C. 5111–5114, authorizes the Secretary to issue drawback (refunds) for a portion of the excise taxes paid on distilled spirits used in the manufacture of certain nonbeverage products. Finally, the IRC at U.S.C. 6402–6404 provides that taxpayers may be refunded on certain overpayments, while section 6423 sets conditions on such claims for alcohol and tobacco excise taxes. Under those IRC authorities, the TTB regulations require taxpayers to make claims using form TTB F 5620.8. On that form, the respondent states the amount of and the reasons and circumstances for the claim. This collected information is necessary to ensure the tax provisions of the IRC are appropriately applied as it allows TTB to determine if submitted claims meet the statutory and regulatory criteria.

Form: TTB F 5620.8.

Affected Public: Businesses or other for-profits; Individuals or households; and Not-for profit institutions.

Estimated Number of Respondents: 5,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 5,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 5,000 hours.

6. Title: Offer in Compromise of Liability Incurred under the Provisions of Title 26 U.S.C. Enforced and Administered by TTB; Collection Information Statements for Individuals and Businesses.

OMB Control Number: 1513–0054.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 7122 provides that the Secretary may compromise any civil or criminal case arising under it, including tax liabilities, in lieu of civil or criminal action. Under this authority, the TTB regulations require persons to submit offers in compromise for violations of the IRC on form TTB F 5640.1. Submitters use that form to identify the tax liabilities or violations being compromised, the amount of the compromise offer, and the reason for the offer. To support requests for installment payments of compromise offers, TTB may require individual and business respondents to supply information documenting financial hardship on TTB F 5600.17 and TTB F 5600.18, respectively. The collected information allows TTB to consider the offer in compromise in relation to the alleged violations of the law and the potential for a payment plan to address circumstances in which the individual or business is unable to pay an accepted offer in compromise immediately in full.

Form: TTB F 5600.17, TTB F 5600.18, TTB F 5640.1.

Affected Public: Businesses or other for-profits; and Individuals or households.

Estimated Number of Respondents: 40.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 40.

Estimated Time per Response: 2.5 hours.

Estimated Total Annual Burden Hours: 90 hours.

7. Title: Offer in Compromise of Liability Incurred under the Federal Alcohol Administration Act.

OMB Control Number: 1513–0055.

Type of Review: Extension of a currently approved collection.

Description: The FAA Act (27 U.S.C. 201 *et seq.*) requires certain alcohol beverage industry members to obtain basic permits from the Secretary, and it prohibits unfair trade practices and deceptive advertising and labeling of alcohol beverages. Under 27 U.S.C. 207, violations of the Act are subject to civil and criminal penalties, but the Secretary may accept monetary compromise for such alleged violations. Under that authority, the TTB regulations provide that a proponent or their agent may submit an offer in compromise to resolve alleged FAA Act violations using form TTB F 5640.2. The form identifies the alleged violation(s) and violator(s), amount of the compromise offer, and the reason(s) for the offer. TTB uses the information to evaluate the adequacy of the compromise offer in relation to the alleged violation(s) of the FAA Act and to determine if it should accept the offer.

Form: TTB F 5640.2.

Affected Public: Businesses or other for-profits; and Individuals or households.

Estimated Number of Respondents: 20.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 20.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 40 hours.

8. Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

OMB Control Number: 1513–0090.

Type of Review: Extension of a currently approved collection.

Description: The IRC at 26 U.S.C. 5061(a) and 26 U.S.C. 5703(b) requires that excise taxes on alcohol and tobacco products be collected on the basis of a return, filed for the periods, at the times, and containing the information the Secretary requires by regulation. Under the IRC at 26 U.S.C. 7652(a), such taxes, at the same rates, are imposed on similar products manufactured in Puerto Rico and brought into the United States, and the majority of those taxes are subsequently transferred into the treasury of Puerto Rico. The TTB regulations in 27 CFR part 26 (for distilled spirits, wine, and beer) and part 41 (for tobacco products and cigarette papers and tubes), prescribe the use of TTB F 5000.25, Excise Tax Return—Alcohol and Tobacco (Puerto Rico) for the collection of the excise taxes imposed by 26 U.S.C. 7652(a). This collection is necessary to ensure the tax provisions of the IRC are appropriately applied.

Form: TTB F 5000.25.

Affected Public: Businesses or other for-profits; Individuals and households.

Estimated Number of Respondents: 24.

Frequency of Response: Quarterly; Annually.

Estimated Total Number of Annual Responses: 474.

Estimated Time per Response: 0.75 hours.

Estimated Total Annual Burden Hours: 356 hours.

9. Title: Special (Occupational) Tax Registration and Returns.

OMB Control Number: 1513–0112.

Type of Review: Extension of a currently approved collection.

Description: Before July 1, 2008, various sections of chapter 51 of the IRC

required alcohol industry members to register for and pay an annual special occupational tax (SOT). However, section 11125 of Public Law 109–59 permanently repealed, effective July 1, 2008, the SOT on alcohol beverage producers and marketers, non-beverage product manufacturers, tax-free alcohol users, and specially denatured spirits users and dealers, but any SOT liabilities incurred for periods before that date remain. Also, while most SOT requirements for the alcohol industry were repealed, 26 U.S.C. 5124 continues to require wholesale and retail alcohol dealers to register with the Secretary when commencing or ending business or when certain changes to existing registration information are necessary. In addition, the IRC at 26 U.S.C. 5731 and 5732 continues to require manufacturers of tobacco products and cigarette papers and tubes, as well as export warehouse proprietors, to register and pay an annual SOT by the use of a return. The registrations and SOT payments for such entities are due on or before the date of commencing business, and on or before July 1 of every year after that. Under the TTB regulations in 27 CFR part 31, alcohol industry members with pre-July 1, 2008, SOT liabilities use TTB F 5630.5a as the return for such liabilities, while wholesale and retail alcohol dealers register or report registration changes on TTB F 5630.5d. Under the TTB regulations in 27 CFR parts 40, 44, and 46, tobacco industry members use TTB F 5630.5t to register and pay SOT. This collection is necessary to ensure the registration and SOT provisions of the IRC are appropriately applied.

Form: TTB F 5630.5a, TTB F 5630.d, and TTB F 5630.5t.

Affected Public: Businesses or other for-profits; Individuals or households; and Not-for-profit institutions.

Estimated Number of Respondents: 6,320.

Frequency of Response: Annually; On Occasion.

Estimated Total Number of Annual Responses: 6,320.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 2,633 hours.

10. Title: Voluntary Chemist Certification Program Applications, Notices, and Records.

OMB Control Number: 1513–0140.

Type of Review: Extension of a currently approved collection.

Description: TTB offers the Chemist Certification Program as a service to the alcohol beverage industry to facilitate export of beverage alcohol to foreign markets. Many countries that require testing as a condition of entry for alcohol beverages accept a report of analysis of those alcohol beverages from a TTB-certified chemist. This certification program ensures that chemists, enologists, brewers, and technicians generate quality data and have the required proficiencies to conduct the required chemical analyses. This information collection includes the application, notice, and recordkeeping requirements associated with the TTB voluntary chemist certification program, including letterhead applications for certification, submission of certification test results, requests for TTB-affirmed reports of analysis, and notices of changes in chemist employment place or status. Under this program, certified chemists and their laboratories must also maintain usual and customary records regarding all analytical results conducted under the TTB certification, and records related to laboratory equipment, quality control policies, procedures and systems, and analyst training and competence.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 310.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 310.

Estimated Time per Response: 1.33 hours.

Estimated Total Annual Burden Hours: 412 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 24, 2022.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–01632 Filed 1–26–22; 8:45 am]

BILLING CODE 4810–31–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 18 January 27, 2022

Part II

Department of the Treasury

31 CFR Part 35

Coronavirus State and Local Fiscal Recovery Funds; Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505–AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is adopting as final the interim final rule published on May 17, 2021, with amendments. This rule implements the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: The provisions in this final rule are effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Katharine Richards, Director, Coronavirus State and Local Fiscal Recovery Funds, Office of Recovery Programs, Department of the Treasury, (844) 529–9527.

SUPPLEMENTARY INFORMATION:

I. Introduction

Overview

Since the first case of coronavirus disease 2019 (COVID–19) was discovered in the United States in January 2020, the pandemic has caused severe, intertwined public health and economic crises. In March 2021, as these crises continued, the American Rescue Plan Act of 2021 (ARPA) [1] established the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local, and Tribal governments [2] with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery. The U.S. Department of the Treasury (Treasury) issued an interim final rule implementing the SLFRF program on May 10, 2021 [3] and has since disbursed over $240 billion to state, local, and Tribal governments and received over 1,500 public comments on the interim final rule. Treasury is now issuing this final rule which responds to public comments, implements the ARPA statutory provisions on eligible and ineligible uses of SLFRF funds, and makes several changes to the provisions of the interim final rule, summarized below in the section Executive Summary of Major Changes.

Since Treasury issued the interim final rule in May 2021, both the public health and economic situations facing the country have evolved. On the public health front, the United States has made tremendous progress in the fight against COVID–19, including a historic vaccination campaign that has reached over 80 percent of adults with at least one dose and is reaching millions of children as well.[4] However, the disease continues to present an imminent threat to public health, especially among unvaccinated individuals. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, with the risk of hospitalization and mortality exponentially greater to unvaccinated Americans. COVID–19 has now infected over 50 million and killed over 800,000 Americans since January 2020; tens of thousands of Americans continue to be infected each day.[5] Even as the nation recovers, new and emerging COVID–19 variants may continue to pose threats to both public health and the economy. Moving forward, state, local, and Tribal governments will continue to play a major role in responding through vaccination campaigns, testing, and other services.

The economic recovery similarly has made tremendous progress but faces continued risks from the disease and the disruptions it has caused. In the early months of the pandemic, the United States experienced the sharpest economic downturn on record, with unemployment spiking to 14.8 percent in April 2020.[6] The economy has gradually added back jobs, with growth accelerating in the first half of 2021.[7] However, as the Delta variant spread, the intensified health risks and renewed disruptions slowed growth, demonstrating the continued risks from the virus. By fall 2021, the economy had exceeded its pre-pandemic size [8] and unemployment had fallen below 5 percent,[9] but despite this progress, too many Americans remain unemployed, out of the labor force, or unable to pay their bills, with this pain particularly acute among lower-income Americans and communities of color. Again, moving forward, state, local, and Tribal governments will remain on the frontlines of the economic response and rebuilding a stronger economy in the aftermath of the pandemic.

However, as state, local, and Tribal governments continue to face substantial needs to respond to public health and economic conditions, they have also experienced severe impacts from the pandemic and resulting recession. State, local, and Tribal governments cut over 1.5 million jobs in the early months of the pandemic amid sharp declines in revenue and remain over 950,000 jobs below their pre-pandemic levels.[10] As the Great Recession demonstrated, austerity among state, local, and Tribal governments can hamper overall economic growth and severely curtail the ability of governments to serve their constituents.

Recognizing these imperatives, the SLFRF program provides vital resources for state, local, and Tribal governments to respond to the pandemic and its economic effects and to replace revenue lost due to the public health emergency, preventing cuts to government services. Specifically, the ARPA provides that SLFRF funds [11] may be used:

(a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

(b) To respond to workers performing essential work during the COVID–19

[1] Public Law 117–2. *https://www.congress.gov/117/plaws/publ2/PLAW-117publ2.pdf.*

[2] Throughout this Supplementary Information, Treasury uses ''state, local, and Tribal governments'' or ''recipients'' to refer generally to governments receiving SLFRF funds; this includes states, territories, Tribal governments, counties, metropolitan cities, and nonentitlement units of local government.

[3] 86 FR 26786 (May 17, 2021).

[4] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited December 31, 2021).

[5] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 7, 2021).

[6] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE* (last visited December 7, 2021).

[7] *Id.*

[8] U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/GDPC1* (last visited December 7, 2021).

[9] U.S. Bureau of Labor Statistics, *supra* note 6.

[10] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited December 7, 2021).

[11] The ARPA adds section 602 of the Social Security Act, which creates the State Fiscal Recovery Fund, and section 603 of the Social Security Act, which creates the Local Fiscal Recovery Fund (together, SLFRF). Sections 602 and 603 contain substantially similar eligible uses; the primary difference between the two sections is that section 602 establishes a fund for states, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties.

public health emergency by providing premium pay to eligible workers;

(c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

(d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress specified two types of ineligible uses of funds: funds may not be used for deposit into any pension fund or, for states and territories only, to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation.

Issued May 10, 2021, Treasury's interim final rule provided further detail on eligible uses of funds within the four statutory categories, ineligible uses of funds, and administration of the program. The interim final rule provided state, local, and Tribal governments substantial flexibility to determine how best to use payments from the SLFRF program to meet the needs of their communities. The interim final rule aimed to facilitate swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of eligible uses of funds that state, local, and Tribal governments may consider.

State, local, and Tribal governments are already deploying SLFRF funds to make an impact in their communities. The SLFRF program ensures that state, local, and Tribal governments have the resources needed to fight the pandemic, sustain and strengthen the economic recovery, maintain vital public services, and make investments that support long-term growth, opportunity, and equity. Treasury looks forward to supporting and engaging with state, local, and Tribal governments as they use these funds to make transformative investments in their communities. Finally, with so many pressing and effective ways to use SLFRF funds, there is no excuse for waste, fraud, or abuse of these funds.

Treasury received over 1,500 comments spanning nearly all aspects of the interim final rule. The final rule considers and responds to comments, provides clarification to many aspects of the interim final rule, and makes several changes to eligible uses under the program, summarized immediately below.

Executive Summary of Major Changes and Clarifications

The final rule provides broader flexibility and greater simplicity in the program, in response to public comments. Among other clarifications and changes, the final rule provides for the following:

• *Public Health and Negative Economic Impacts:* In addition to programs and services, the final rule clarifies that recipients may use funds for capital expenditures that support an eligible COVID–19 public health or economic response. For example, recipients may build certain affordable housing, childcare facilities, schools, hospitals, and other projects consistent with the requirements in this final rule and the Supplementary Information.

In addition, the final rule presumes that an expanded set of households and communities are ''impacted'' or ''disproportionately impacted'' by the pandemic, thereby allowing recipients to provide responses to a broad set of households and entities without requiring additional analysis. Further, the final rule provides a broader set of enumerated eligible uses available for these communities as part of COVID–19 public health and economic response, including making affordable housing, childcare, and early learning services eligible in all impacted communities and making certain community development and neighborhood revitalization activities eligible for disproportionately impacted communities.

Further, the final rule allows for a broader set of uses to restore and support government employment, including hiring above a recipient's pre-pandemic baseline, providing funds to employees that experienced pay cuts or furloughs, avoiding layoffs, and providing retention incentives.

• *Premium Pay:* The final rule offers more streamlined options to provide premium pay, by broadening the share of essential workers who can receive premium pay without a written justification while maintaining a focus on lower-income and frontline essential workers.

• *Revenue Loss:* The final rule offers a standard allowance for revenue loss of up to $10 million, not to exceed a recipient's SLFRF award amount, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation. Recipients that select the standard allowance may use that amount for government services.

• *Water, Sewer, and Broadband Infrastructure:* The final rule significantly broadens eligible broadband infrastructure investments to address challenges with broadband access, affordability, and reliability, and adds additional eligible water and sewer infrastructure investments, including a broad range of lead remediation and stormwater management projects.

Structure of the Supplementary Information

In addition to this Introduction, this Supplementary Information is organized into four sections: (1) Eligible Uses, (2) Restrictions on Use, (3) Program Administration Provisions, and (4) Regulatory Analyses.

The Eligible Uses section describes the standards to determine eligible uses of funds in each of the four eligible use categories:

(1) Responding to the public health and negative economic impacts of the pandemic (which includes several sub-categories)

(2) Providing premium pay to essential workers

(3) Providing government services to the extent of revenue loss due to the pandemic, and

(4) Making necessary investments in water, sewer, and broadband infrastructure.

Each eligible use category has separate and distinct standards for assessing whether a use of funds is eligible. Standards, restrictions, or other provisions in one eligible use category do not apply to the others. Therefore, recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category. In the case of uses to respond to the public health and negative economic impacts of the pandemic, recipients should also determine which sub-category the eligible use fits within (*i.e.,* public health, assistance to households, assistance to small businesses, assistance to nonprofits, aid to impacted industries, or public sector capacity and workforce), then assess whether the potential use of funds meets the eligibility standard for that sub-category. Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it.

In some sections of the rule, Treasury identifies specific uses of funds that are eligible, called ''enumerated eligible uses''; for example, Treasury provides many enumerated eligible uses of funds to respond to the public health and negative economic impacts of the pandemic. Uses of funds that are not specifically named as eligible in this

final rule may still be eligible in two ways. First, under the revenue loss eligible use category, recipients have broad latitude to use funds for government services up to their amount of revenue loss due to the pandemic. A potential use of funds that does not fit within the other three eligible use categories may be permissible as a government service, which recipients can fund up to their amount of revenue loss. For example, transportation infrastructure projects are generally ineligible as a response to the public health and negative economic impacts of the pandemic; however, a recipient could fund these projects as a government service up to its amount of revenue loss, provided that other restrictions on use do not apply. See sections Revenue Loss and Restrictions on Use for further information. Second, the eligible use category for responding to the public health and negative economic impacts of the pandemic provides a non-exhaustive list of enumerated eligible uses, which means that the listed eligible uses include some, but not all, of the uses of funds that could be eligible. The Eligible Uses section provides a standard for determining if other uses of funds, beyond those specifically enumerated, are eligible. If a recipient would like to pursue a use of funds that is not specifically enumerated, the recipient should use the standard and other guidance provided in the section Public Health and Negative Economic Impacts to assess whether the use of funds is eligible.

Next, the Restrictions on Use section describes limitations on how funds may be used. Treasury has divided the Restriction on Use section into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions. These restrictions apply to all eligible use categories; however, some restrictions apply only to certain types of recipient governments, and recipients are advised to review the final rule to determine which restrictions apply to their type of government (*e.g.,* state, territory, Tribal government, county, metropolitan city, or nonentitlement unit of government). To reiterate, for recipient governments covered by a specific restriction, that restriction applies to all eligible use categories and any use of funds under the SLFRF program. Specifically:

- For states and territories only, funds may not be used to offset directly or indirectly a reduction in net tax revenue resulting from a change in state or territory law.
- For all recipients except Tribal governments, funds may not be used for deposits into a pension fund.
- For all recipients, funds may not be used for debt service or replenishing financial reserves.
- All recipients must also comply with three general restrictions. First, a recipient may not use SLFRF funds for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID–19. Second, recipients may not use SLFRF funds in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules. Lastly, recipients should be aware that federal, state, and local laws and regulations, outside of SLFRF program requirements, also apply, including for example, environmental laws and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).

The Program Administration Provisions section describes the processes and requirements for administering the program on an ongoing basis, specifically as relates to the following: Distribution of funds, timeline for using funds, transfer of funds from a recipient to different organizations, use of funds for program administration, reporting on use of funds, and remediation and recoupment of funds used for ineligible purposes. Of note, SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, with all funds obligated by December 31, 2024 and all funds spent by December 31, 2026. Recipients are advised to also consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including applicability of the Uniform Guidance.

Finally, the section Regulatory Analyses provides Treasury's analysis of the impacts of this rulemaking, as required by several laws, regulations, and Executive Orders.

Throughout this Supplementary Information, statements using the terms ''should'' or ''must'' refer to requirements, except when used in summarizing opinions expressed in public comments. Statements using the term ''encourage'' refer to recommendations, not requirements.

II. Eligible Uses

A. Public Health and Negative Economic Impacts

Background

Since the first case of COVID–19 was discovered in the United States in January 2020, the disease has infected over 50 million and killed over 800,000 Americans.[12] The disease—and necessary measures to respond—have had an immense public health and economic impact on millions of Americans across many areas of life, as detailed below in the respective sections on Public Health and Negative Economic Impacts. Since the release of the interim final rule in May 2021, the country has made major progress in fighting the disease and rebuilding the economy but faces continued risks, as illustrated by the spread of the Delta variant and the resulting slowdown in the economic recovery. The SLFRF program, and Treasury's interim final rule, provide substantial flexibility to recipients to respond to pandemic impacts in their local community; this flexibility is designed to help state, local, and Tribal governments adapt to the evolving public health emergency and tailor their response as needs evolve and to the particular local needs of their communities.

Indeed, state, local, and Tribal governments face continued needs to respond at scale to the public health emergency. This includes continued public health efforts to slow the spread of the disease, to increase vaccination rates and provide vaccinations to new populations as they become eligible, to protect individuals living in congregate facilities, and to address the broader impacts of the pandemic on public health. Similarly, while a strong economic recovery is underway, the economy remains 3.9 million jobs below its pre-pandemic level, pointing to the continued need for response efforts, with low-income workers and communities of color facing elevated rates of unemployment and economic hardship.[13] Long-standing disparities in health and economic outcomes in

[12] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 31, 2021).

[13] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS] *https://fred.stlouisfed.org/series/PAYEMS* (last visited December 7, 2021).

underserved[14] communities, that amplified and exacerbated the impacts of the pandemic, also present continued barriers to full and equitable recovery.

As state, local, and Tribal governments work to meet the public health and economic needs of their communities, these governments are also confronting the need to rebuild their own capacity. Facing severe budget challenges during the pandemic, many state, local, and Tribal governments have been forced to make cuts to services or their workforces, including cutting over 1.5 million jobs from February to May 2020, or delay critical investments. As of fall 2021, state, local, and Tribal government employment remained over 950,000 jobs below pre-pandemic levels.[15] In the recovery from the Great Recession, cuts to state, local, and Tribal governments became a meaningful drag on economic growth for several years, and the SLFRF program provides the resources needed to re-invest in vital public services and workers to avoid this outcome.[16]

1. General Provisions: Structure and Standards

Background: Sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act establish that recipients may use funds ''to respond to the public health emergency with respect to COVID–19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.'' The interim final rule established three categories within this eligible use: (1) Public health responses for those impacted by the pandemic, including the general public; (2) responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic; and (3) additional services, either as a public health response or a response to the negative economic impacts of the pandemic, for disproportionately impacted communities.

The interim final rule established the method to determine which specific programs or services may be eligible to respond to the public health emergency or to respond to the negative economic impacts of the public health emergency within this framework. The interim final rule included multiple enumerated uses that are eligible within each of these categories when provided to eligible populations, including populations that the interim final rule presumed to have been *impacted* (in the case of public health responses and responses to negative economic impacts) or *disproportionately impacted* (in the case of disproportionately impacted communities). Finally, the interim final rule also allowed recipients to designate additional individuals or classes as impacted or disproportionately impacted. The standards for each of these criteria under the interim final rule are discussed below.

To assess whether a program or service would be eligible to respond to the public health emergency or its negative economic impacts, the interim final rule stated that, ''the recipient [is required] to, first, identify a need or negative impact of the COVID–19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact [. . . .] [E]ligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID–19 public health emergency.'' The enumerated eligible uses were presumed to meet this criterion.

With respect to uses not specifically enumerated in the interim final rule as eligible public health responses, the interim final rule stated that, ''[t]o assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID–19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.''

With respect to uses not specifically enumerated in the interim final rule as eligible responses to a negative economic impact of the public health emergency, the interim final rule stated that ''[e]ligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond to or address this harm.[17] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID–19 public health emergency.'' The interim final rule went on to say that: ''In addition, the eligible use must 'respond to' the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.''

Throughout this final rule, Treasury refers to households, communities, small businesses, nonprofits, and industries that experienced public health or negative economic impacts of the pandemic as ''impacted.'' The first section in the interim final rule under this eligible use category included public health responses for these impacted classes. The second category in the interim final rule under this eligible use category included responses to the negative economic impacts that were experienced by these impacted classes as a result of the pandemic.

The interim final rule further recognized that certain populations have experienced disproportionate health or negative economic impacts during the pandemic, as pre-existing disparities in these communities amplified the impacts of the pandemic. For example, the interim final rule recognized that the negative economic effects of the pandemic were particularly pronounced among lower-income families, who were more likely to experience income loss and more likely to have a job that required in-person work. The interim final rule recognized the role of pre-existing social vulnerabilities and disparities in driving the disparate health and economic outcomes and presumed that programs designed to address these health or economic disparities are responsive to the public health or negative economic impacts of the COVID–19 public health emergency, when provided in disproportionately impacted communities. In addition to identifying certain populations and communities

[14] Treasury uses ''underserved'' to refer to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. In the interim final rule, Treasury generally used the term ''disadvantaged'' to refer to these same populations and communities.

[15] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001* (last visited December 7, 2021).

[16] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), *http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.*

[17] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of section 602 and 603 of the Social Security Act.

presumed to be disproportionately impacted, it also empowered recipients to identify other disproportionately impacted households, populations, communities, or small businesses. The interim final rule provided that, in identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Throughout this final rule, Treasury refers to those households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic as ''disproportionately impacted.'' The third category in the interim final rule under this eligible use included public health responses and responses to the negative economic impacts for these disproportionately impacted classes.

The interim final rule provided significant flexibility for recipients to determine which households, populations, communities, or small businesses have been impacted and/or disproportionately impacted by the pandemic and to identify appropriate responses. The interim final rule included several provisions to provide simple methods for recipients to identify impacts and design programs to address those impacts. First, the interim final rule allowed recipients to demonstrate a negative economic impact on a population or class and provide assistance to households or small businesses that fall within that population or class. In such cases, the recipient need only demonstrate that an individual household or business is within the class that experienced a negative economic impact, rather than requiring a recipient to demonstrate that each individual household or small business experienced a negative economic impact, because the impact was already identified for the class.

Second, in the interim final rule, Treasury presumed that certain populations have been impacted or disproportionately impacted and are thus eligible for services that respond to these impacts or disproportionate impacts. Specifically, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. The interim final rule also permitted recipients to presume that certain services provided in Qualified Census Tracts (QCTs), to individuals living in QCTs, or by Tribal governments are responsive to disproportionate impacts of the pandemic. In addition to the populations presumed to be impacted or disproportionately impacted, under the interim final rule, recipients could identify other impacted households or classes, as described above, as well as other populations, households, or geographic areas that are disproportionately impacted by the pandemic.

Third, as mentioned previously, the interim final rule included a non-exhaustive list of uses of funds that Treasury identified as responsive to the impacts or disproportionate impacts of the pandemic. Treasury refers to these as ''enumerated eligible uses.''

To summarize, the interim final rule identified certain populations that are presumed to be *impacted* by the pandemic (and specific enumerated uses of funds that are responsive to that impact) and populations that are presumed to be *disproportionately impacted* by the pandemic (and specific enumerated uses of funds that are responsive to those disproportionate impacts). In addition, the interim final rule provided standards for recipients to assess whether additional uses of funds, beyond the enumerated eligible uses, are eligible for impacted and disproportionately impacted populations and permitted recipients to identify other households or classes that experienced impacts of the pandemic or disproportionate impacts of the pandemic.

Rule Structure

Public Comment: Many commenters expressed concern regarding the structure of the eligible uses, indicating they found the structure of the public health and negative economic impacts section of the interim final rule to be confusing or difficult to navigate. Other commenters indicated that they understood the enumerated uses to be the only eligible uses and/or the presumed eligible populations to be the only eligible populations. Several commenters expressed frustration about the number of eligible uses specifically enumerated in the interim final rule, which they considered too few, and commenters proposed a wide range of additional enumerated eligible uses (for further discussion, see the section Public Health and section Negative Economic Impacts). Commenters expressed concern with pursuing uses of funds not explicitly enumerated in the eligible use section or uncertainty regarding the broad flexibility provided under the interim final rule to pursue additional programs that respond to the public health or negative economic impacts of the pandemic or the process for doing so.

Treasury Response: Treasury recognizes that many commenters felt the structure of the interim final rule could be clarified. These comments are consistent with many of the questions that Treasury has received from recipients, which requested clarification regarding the category their desired response fits into. Treasury observes that these comments and questions generally fall into four categories: (1) How to identify the correct public health or negative economic impact category for a particular response, (2) how to identify whether a particular use is eligible, (3) how to identify an impacted or disproportionately impacted class, and (4) whether an enumerated use can be provided to a class other than those presumed impacted or disproportionately impacted. In response to comments, Treasury is adjusting the structure of the public health and negative economic impacts eligible use section of the final rule to improve clarity and make it easier for recipients to interpret and apply the final rule.

Specifically, Treasury is restructuring the rule to aid recipients in determining whether a particular response is eligible and how the particular response might be eligible under a particular category. This restructuring reinforces the fundamental criteria that a use of funds is eligible based on its responsiveness to a public health or negative economic impact experienced by individuals, households, small businesses, nonprofits, or impacted industries (together ''beneficiaries'').[18] This restructuring is intended to make the rule easier to navigate and to implement, including any criteria or conditions on particular uses of funds.

The reorganization of the public health and negative economic impacts section of the final rule is also intended to clarify the enumerated eligible uses described in the interim final rule. The reorganization itself is not intended to change the scope of the enumerated uses that were included in the interim final rule or that were allowable under the interim final rule. In some cases, specific enumerated uses are being altered, and those changes are discussed

[18] Note that small businesses, nonprofits, and industries may also function as subrecipients. For additional information on these distinctions see section Distinguishing Subrecipients versus Beneficiaries.

as changes within the section on that enumerated use.

The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem: (1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, and (4) preventing and responding to violence. Under this approach, eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary: (1) Assistance to households, (2) assistance to small businesses, and (3) assistance to nonprofits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and other impacted industries. The first three categories, assistance to households, small businesses, and nonprofits, include enumerated eligible uses for impacted and disproportionately impacted beneficiaries. This change in structure is intended to provide a framework that clearly identifies the intended beneficiaries of uses of funds and provides clarity about what types of assistance are ''responsive to the pandemic or its negative economic impacts'' for these beneficiaries.

a. Standards for Identifying a Public Health or Negative Economic Impact

Standards: Designating a Public Health Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether a use of funds, beyond those specifically enumerated as eligible, might be an eligible public health response. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. For example, a commenter requested more clarification around exactly what and whose medical expenses can be covered. These comments ranged in their specificity and covered the full range of the enumerated eligible uses.

Treasury Response: Treasury is clarifying that when assessing whether a program or service is an eligible use to respond to the public health impacts of the COVID–19 public health emergency, the Department will consider the two eligibility requirements discussed below. These standards apply to all proposed public health uses.

First, there must be a negative public health impact or harm experienced by an individual or a class. For ease of administration, the interim final rule allowed, and the final rule maintains the ability for, recipients to identify a public health impact on a population or group of individuals, referred to as a ''class,'' and to provide assistance to that class. In determining whether an individual is eligible for a program designed to address a harm experienced by a class, the recipient need only document that the individual is within the class that experienced a public health impact, see section Standards: Designating Other Impacted Classes. In the case of some impacts, for example impacts of COVID–19 itself that are addressed by providing prevention and mitigation services, such a class could reasonably include the general public.

Second, the program, service, or other intervention must address or respond to the identified impact or harm. The final rule maintains the interim final rule requirement that eligible uses under this category must be in response to the disease itself or other public health harms that it caused.[19]

Responses must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiaries and the ability of the response to address the impact or harm experienced by those beneficiaries.

Responses must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

If a recipient intends to fund capital expenditures in response to the public health impacts of the pandemic, recipients should refer to the section Capital Expenditures for details about the eligibility of capital expenditures.

Standards: Designating a Negative Economic Impact

Public Comment: Many commenters expressed uncertainty about how to determine whether uses of funds, beyond those specifically enumerated as eligible, might be eligible responses to negative economic impacts. For example, many commenters submitted questions asking whether specific uses of funds would be eligible. Others described what they considered to be impacts of the pandemic and argued that uses of funds to respond to these issues should be eligible. Some commenters requested that Treasury provide additional detail to guide their assessments of eligible uses of funds. These comments ranged in their specificity and covered the full range of eligible uses to respond to negative economic impacts. Several commenters asked for clarification about what types of food assistance would be considered eligible. Another commenter requested that the establishment of outdoor dining be eligible. Many commenters inquired about homeless shelters as an eligible use of SLFRF funds.

Commenters also expressed uncertainty about the ability to establish classes, including geographic areas, that experienced a negative economic impact or disagreed with the requirement that an individual entity be impacted by the pandemic in order to receive assistance. For example, a commenter argued that interventions should not be limited to individuals or businesses that experienced an economic impact and should instead be used broadly to support economic growth. These commenters argued that an expenditure that supports a more robust economy may help combat the pandemic's negative economic impacts, and it can do so even if funding is provided to individuals or entities that did not themselves experience a negative economic impact during the pandemic.

Treasury Response: The final rule maintains the standard articulated in

[19] In designing an intervention to mitigate COVID–19, the recipient should consider guidance from public health authorities, particularly the Centers for Disease Control and Prevention (CDC), in assessing appropriate COVID–19 mitigation and prevention strategies (*see* Centers for Disease Control and Prevention, COVID–19, *https://www.cdc.gov/coronavirus/2019-ncov/index.html*). A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds.

the interim final rule. For clarity, the final rule re-articulates that when assessing whether a program or service is an eligible use to respond to the negative economic impacts of the COVID–19 public health emergency, Treasury will consider the two eligibility requirements discussed below.

First, there must be a negative economic impact, or an economic harm, experienced by an individual or a class. The recipient should assess whether, and the extent to which, there has been an economic harm, such as loss of earnings or revenue, that resulted from the COVID–19 public health emergency. A recipient should first consider whether an economic harm exists and then whether this harm was caused or made worse by the COVID–19 public health emergency. This approach is consistent with the text of the statute, which provides that funds in this category must be used to ''respond to the public health emergency with respect to . . . its negative economic impacts.''

While economic impacts may either be immediate or delayed, individuals or classes that did not experience a negative economic impact from the public health emergency would not be eligible beneficiaries under this category. As noted above, the interim final rule permitted recipients to presume that households that experienced unemployment, increased food or housing insecurity, or are low- or moderate-income experienced a negative economic impact from the pandemic. For discussion of the final rule's approach to this presumption, see section Populations Presumed Eligible.

The final rule also maintains several provisions included in the interim final rule and subsequent guidance that are intended to ease administration of identifying that the beneficiary experienced a negative economic impact or harm. For example, the interim final rule allowed, and the final rule maintains the ability for, recipients to demonstrate a negative economic impact on a population or group, referred to as a ''class,'' and to provide assistance to households, small businesses, or nonprofits that fall within that class. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the class that experienced a negative economic impact, see section Standards: Designating Other Impacted Classes. This would allow, for example, an internet access assistance program for all households with children to support those households' ability to participate in healthcare, work, and educational activities like extending learning opportunities, among other critical activities. In that case, the recipient would only need to identify a negative economic impact to the class of ''households with children'' and would not need to document or otherwise demonstrate that each individual household served experienced a negative economic impact.

Second, the response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency. In selecting responses, the recipient must assess whether, and the extent to which, the use would respond to or address this harm or impact. This approach is consistent with the text of the statute, which provides that funds may be used to ''respond to'' the ''negative economic impacts'' of the public health emergency ''including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.'' The list of potential responses (''assistance'' or ''aid'') suggests that responses should address the ''negative economic impacts'' of particular types of beneficiaries (*e.g.,* households or small businesses).

Responses must be reasonably designed to benefit the individual or class that experienced the negative economic impact or harm. Uses of funds should be assessed based on their responsiveness to their intended beneficiary and the ability of the response to address the impact or harm experienced by that beneficiary.[20]

Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.[21] Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm. In evaluating whether a use is reasonably proportional, recipients should consider relevant factors about the harm identified and the response. For example, recipients may consider the size of the population impacted and the severity, type, and duration of the impact. Recipients may also consider the efficacy, cost, cost-effectiveness, and time to delivery of the response.

Finally, recipients should be aware of the distinction between beneficiaries of funds and subrecipients; a recipient may provide services to beneficiaries through subrecipients that did not experience a negative economic impact, see section Distinguishing Subrecipients versus Beneficiaries. That is, a recipient may award SLFRF funds to an entity that did not experience a negative economic impact in order to implement a program or provide a service to beneficiaries on its behalf. Such transfers, when implementing a public health or negative economic impact response, should be responsive to and designed to benefit individuals, households, small businesses, nonprofits, or impacted industries that did experience a public health or negative economic impact.

Determining the Appropriate Eligible Use Category

Public Comment: Some commenters expressed uncertainty about how to analyze negative economic impacts to different entities (*e.g.,* households, small businesses, nonprofits). For example, commenters asked whether a nonprofit, which did not experience a negative economic impact itself, could be granted funds to provide services to individuals experiencing homelessness, who did experience negative economic impacts. Other commenters proposed providing assistance to support the expansion of small businesses, under the theory that this would create more job opportunities for unemployed workers who experienced negative economic impacts.

Treasury Response: In the final rule, Treasury is clarifying that recipients should assess a potential use of funds based on which beneficiary experienced the negative economic impact, in other words, the households, small businesses, nonprofits, or impacted industries that experienced the negative economic impact.

Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient.

[20] For example, expenses such as excessive compensation to employees or expenses which have already been reimbursed through another federal program, are not reasonably designed to address a negative economic impact to a beneficiary.

[21] For example, a program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with practices in line with CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds.

When a recipient provides funds to another entity to carry out eligible uses of funds and serve beneficiaries the entity becomes a subrecipient (see section Distinguishing a Subrecipient versus a Beneficiary). For example, a recipient may grant funds to a nonprofit organization to provide food assistance (an eligible use) to low-income households (the beneficiaries). Recipients only need to assess whether the beneficiaries experienced a negative economic impact and whether the eligible use responds to that impact, consistent with the two-part framework described above; the organization carrying out the eligible use does not need to have experienced a negative economic impact if it is serving as the vehicle for reaching the beneficiaries. When making determinations about how to implement a program, recipients should consider whether that method of program implementation is an effective and efficient method to implement the program and do so in accordance with the Uniform Guidance provisions that govern procurements and sub-granting of federal funds, as applicable.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance or the entity that experienced a negative economic impact. Assistance to a small business or to an impacted industry must respond to a negative economic impact experienced by that small business or industry. Recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact, although recipients can identify negative economic impacts for classes, rather than individual businesses, and may also presume that small businesses in certain areas experienced impacts; see section General Provisions: Structure and Standards and section Assistance to Small Businesses for details.

Several examples illustrate the application of these concepts. For example, a recipient could provide assistance to households via a contract with a business to create subsidized jobs for the long-term unemployed; in this case the business is a subrecipient and need not have experienced a negative economic impact, but the recipient would need to identify a specific connection between the assistance provided and addressing the negative economic impact experienced by the unemployed households. The recipient could, for instance, document the subsidized jobs created under the contract and their reservation for long-term unemployed individuals. Similarly, a recipient might provide assistance to a small business that experienced a pandemic-related loss of revenue. This small business is a beneficiary and may use those funds in many ways, potentially including hiring or retaining staff. However, general assistance to a business that did not experience a negative economic impact under the theory that this assistance generally grows the economy and therefore enhances opportunities for unemployed workers would not be an eligible use, because such assistance is not reasonably designed to impact the individuals or classes that experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

b. Populations Presumed Eligible

Presumed Eligibility: Impacted and Disproportionately Impacted Households and Communities

Background: As noted above, the interim final rule allowed recipients to presume that certain households were impacted or disproportionately impacted by the pandemic and thus eligible for responsive programs or services. Specifically, under the interim final rule, recipients could presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic, and recipients may provide services that respond to these impacts.

The interim final rule also recognized that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and allowed for a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities. Under the interim final rule, recipients were allowed to presume that families residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic.

Definition of Low- and Moderate-Income

Public Comment: As noted earlier, many commenters sought a definition for ''low- and moderate-income'' to provide recipients greater clarity on which specific households could be presumed to be impacted by the pandemic.

Treasury Response: The final rule maintains the presumptions identified in the interim final rule and defines low- and moderate-income for the purposes of determining which households and populations recipients may presume to have been impacted. To simplify the administration of this presumption, the final rule adopts a definition of low- and moderate-income based on thresholds established and used in other federal programs.

Definitions. The final rule defines a household as *low income* if it has (i) income at or below 185 percent of the Federal Poverty Guidelines (FPG) for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or (ii) income at or below 40 percent of the Area Median Income (AMI) for its county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD).[22]

The final rule defines a household as *moderate income* if it has (i) income at or below 300 percent of the FPG for the size of its household based on the most recently published poverty guidelines by HHS or (ii) income at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD.[23]

Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided. For example, recipients developing a program that serves specific households (*e.g.,* a subsidy for internet access, a childcare program) may measure income at the household level. Recipients providing a service that reaches a general geographic area (*e.g.,* a park) may measure median income of that area.

Further, recipients should generally use the income threshold for the size of the household to be served (*e.g.,* when providing childcare to a household of five, recipients should reference the income threshold for a household of five); however, recipients may use the income threshold for a default household size of three if providing

[22] AMI is also often referred to as median family income for the area. Since AMI is synonymous with this term and used more generally, the final rule refers to AMI.

[23] For the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, HUD provides AMI for towns rather than counties. Recipients in these states should use the AMI corresponding to their town when determining thresholds for both low and moderate income.

services that reach a general geographic area or if doing so would simplify administration of the program to be provided (*e.g.,* when developing a park, recipients should use the income threshold for a household size of three and compare it to median income of the geographic area to be served).

Note that recipients can also identify and serve other classes of households that experienced negative economic impacts or disproportionate impacts from the pandemic; recipients can identify these classes based on their income levels, including above the levels defined as low- and moderate-income in the final rule. For example, a recipient may identify that households in their community with incomes above the final rule threshold for low-income nevertheless experienced disproportionate impacts from the pandemic and provide responsive services. See section General Provisions: Standards for Identifying Other Eligible Populations for details on applicable standards.

Applicable levels. For reference, the FPG is commonly referred to as the federal poverty level (FPL) and is related to—although distinct from—the U.S. Census Bureau's poverty threshold. The final rule uses the FPG when referring specifically to the HHS guidelines, as these are the quantitative metrics used for determining low- and moderate-income households.

The FPG by household size for 2021 is included in the table below. Recipients should refer to HHS Poverty Guidelines for this information, which is updated annually and available on the HHS website.[24] For calculating the thresholds of 40 percent and 65 percent of AMI, recipients should refer to the annual HUD Section 8 50 percent income limits by county and household size published by HUD and available on the HUD website; in particular, recipients should calculate the 40 percent threshold as 0.8 times the 50 percent income limit, and recipients should calculate the 65 percent threshold as 1.3 times the 50 percent income limit.[25] Finally, for median income of Census Tracts and other geographic areas, recipients should refer to the most recent American Community Survey 5-year estimates available through the Census website.[26]

2021 FEDERAL POVERTY GUIDELINES

Household size	48 contiguous states and the District of Columbia	Alaska	Hawaii
1	$12,880	$16,090	$14,820
2	17,420	21,770	20,040
3	21,960	27,450	25,260
4	26,500	33,130	30,480
5	31,040	38,810	35,700
6	35,580	44,490	40.920
7	40,120	50,170	46,140
8	44,660	55,850	51,360

For families/households with more than 8 persons, add the following amounts for each additional person:
48 Contiguous States and the District of Columbia: $4,540.
Alaska: $5,680.
Hawaii: $5,220.
Source: "HHS Poverty Guidelines for 2021," available at *https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

Rationale. In defining low income, the final rule uses both the FPG and AMI to account for national trends and regional differences. The metric of 185 percent of FPG aligns with some other programs; for instance, under the National School Lunch Program, students with household incomes under 185 percent of FPG qualify for free or reduced-price lunch, and schools often use eligibility for free or reduced-price lunch as an indicator of low-income status under Title 1–A of the Elementary and Secondary Education Act. Eligibility for other programs, such as the Federal Communications Commission's e-Rate program and the Special Supplemental Nutrition Program for Women, Infants and Children employ this metric as well. In addition, 185 percent of the FPG for a family of four is $49,025, which is approximately the wage earnings for a two-earner household in which both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID–19.[27] This measure is targeted toward those at the bottom of the income distribution and thus helps to promote use of SLFRF funds towards populations with the greatest needs. At the same time, with approximately one-quarter of Americans below 185 percent of the poverty threshold, this approach is broad enough to facilitate use of SLFRF funds across many jurisdictions.[28] Because regions have different cost and income levels, this definition also allows for upward adjustment based on AMI for those regions where 40 percent of AMI exceeds 185 percent of FPG. The metric of 40 percent of AMI is based on the midpoint of values often used to designate certain categories of low-income households; specifically, it is the midpoint of the 30 percent income limit and the 50 percent income limit

[24] U.S. Department of Health and Human Service, HHS Poverty Guidelines for 2021, *available at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines.*

[25] U.S. Department of Housing and Urban Development, FY 2021 Section 8 Income Limits, *available at https://www.huduser.gov/portal/datasets/il/il21/Section8-FY21.xlsx.* Recipients may refer to the list of counties (and New England towns) identified by state and metropolitan area for identifying the appropriate area. U.S. Department of Housing and Urban Development, FY 2021 List of Counties (and New England Towns) Identified by State and Metropolitan Area, *available at https://www.huduser.gov/portal/datasets/il/il21/area-definitions-FY21.pdf.*

[26] The U.S. Census Bureau provides an interactive map: U.S. Census Bureau, Median Household Income State Selection Map, *available at https://data.census.gov/cedsci/map?q=Median%20Household%20Income&g=0100000US%2404000%24001&tid=ACSST5Y2019.S1901&cid=S1901_C01_012E&vintage=2019.* The U.S. Census Bureau also provides an interactive table: U.S. Census Bureau, Median Household Income In The Past 12 Months (In 2019 Inflation-Adjusted Dollars), *available at https://data.census.gov/cedsci/table?q=b19013&tid=ACSDT5Y2019.B19013&hidePreview=true.*

[27] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oes_nat.htm* (last visited December 7, 2021).

[28] U.S. Census Bureau, Poverty Status by State, *https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pov/pov-46.html* (last visited December 7, 2021).

used in programs such as the Community Development Block Grant (CDBG) Program.

In defining moderate income, the final rule uses both the FPG and AMI to account for national trends and regional differences. While there are different definitions of moderate income, 300 percent of FPG falls within the range commonly used by researchers.[29] Analysis of median wages among a sample of occupations likely impacted by the pandemic also suggests that an income cutoff of 300 percent of FPG would include many households with workers in such occupations.[30] Moreover, the metric of 300 percent of FPG covers households that, while above the poverty line, often lack economic security.[31] Treasury determined the AMI threshold for moderate income by maintaining the same ratio of FPG multiplier to AMI multiplier as in the definition of low income. This anchors the threshold to the existing definitions of moderate income from the literature while taking into account geographical variation in income and expenses in the same manner as the definition of low income.

Eligibility Presumptions

Public Comment: Many commenters believed that a broader range of groups should be considered presumptively impacted and disproportionately impacted, arguing that many households had been affected by the pandemic and that broader presumed eligibility would help recipients provide assistance quickly and effectively.

Treasury also received many comments on the presumption that families living in QCTs or receiving services from Tribal governments were disproportionately impacted by the pandemic. While many commenters supported the interim final rule's recognition of disproportionate impacts of the pandemic on low-income communities, many commenters disagreed with treating QCTs as the only presumed eligible group of disproportionately impacted households, apart from households served by Tribal governments. While acknowledging a potential increase in administrative burden, commenters recommended that Treasury presume other households or geographic areas, in addition to QCTs, were disproportionately impacted; suggestions included all low- and moderate-income households, geographic areas designated as Opportunity Zones, Difficult Development Areas (DDAs), areas with a certain amount of Real Estate Advantage Program (REAP) recipients, or use of eligibility criteria from the Community Reinvestment Act. One commenter generally recommended that a clearer definition of ''disproportionately impacted'' should be provided and that any definition should include communities of color and people of limited means. Another recommended specific eligibility for people that had recently interacted with the criminal justice system. Many commenters representing Tribal governments and groups recommended a presumption of eligibility for all Tribal uses of funds, clarification that off reservation members remained eligible, and broad flexibility on use of funds.

Additionally, commenters noted that some areas are technically eligible to be QCTs but fall short because of the aggregate population of eligible tracts. One commenter noted that these areas should be considered the same as QCTs for the purpose of SLFRF funds. Some commenters argued that rural counties typically have few QCTs despite high levels of poverty and disruption caused by the COVID–19 pandemic. Other rural commenters recommended that the designation be by county rather than at a more granular level, arguing that the QCT designation is biased towards urban areas and understates the harm done to rural America. Many commenters representing Tribal governments supported the presumption that services provided by Tribal governments respond to disproportionate impacts.

Treasury Response

Summary: While households residing in QCTs or served by Tribal governments were presumed to be disproportionately impacted, Treasury emphasizes that under the interim final rule recipients could also identify other households, populations, or geographic areas that were disproportionately impacted by the pandemic and provide services to respond.

The final rule maintains the presumptions identified in the interim final rule, as well as recipients' ability to identify other impacted or disproportionately impacted classes. The final rule also allows recipients to presume that low-income households were disproportionately impacted, and as discussed above, defines low- and moderate-income. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Households presumed to be impacted: Impacted households are those that experienced a public health or negative economic impact from the pandemic.

With regard to public health impacts, recipients may presume that the general public experienced public health impacts from the pandemic for the purposes of providing services for COVID–19 mitigation and behavioral health. In other words, recipients may provide a wide range of enumerated eligible uses in these categories to the general public without further analysis. As discussed in the introduction, COVID–19 as a disease has directly affected the health of tens of millions of Americans, and efforts to prevent and mitigate the spread of the disease are needed and in use across the country. Further, the stress of the pandemic and resulting recession have affected nearly all Americans. Accordingly, the final rule presumes that the general public are impacted by and eligible for services to respond to COVID–19 mitigation and prevention needs, as well as behavioral health needs.

With regard to negative economic impacts, as with the interim final rule, under the final rule recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. The final rule's definition of low- and moderate-income, by providing standard metrics based on widely available data, is intended to simplify administration for recipients.

Households presumed to be disproportionately impacted: Disproportionately impacted households are those that experienced a

[29] For instance, Melissa Kearney et al. (2013) cap the ''struggling lower middle-income class'' at 250 percent of the federal poverty level, while Isabel Sawhill and Edward Rodrigue (2015) define the ''middle class'' as those with incomes of at least 300 percent of the poverty line. Melissa Kearney et al., ''A Dozen Facts about America's Struggling Lower-Middle Class,'' The Hamilton Project (December 2013), *https://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_12LowIncomeFacts_Final.pdf;* Isabel Sawhill and Edward Rodrigue, ''An Agenda for Reducing Poverty and Improving Opportunity,'' Brookings Institution, *https://www.brookings.edu/wp-content/uploads/2016/07/Sawhill_FINAL.pdf.*

[30] Data on median annual wages from: U.S. Bureau of Labor and Statistics, Occupational Employment and Wage Statistics, *available at https://www.bls.gov/oes/current/oes_nat.htm* (last visited December 7, 2021).

[31] For instance, households earning between 200 and 300 percent of the FPG have significantly higher rates of food and housing insecurity than those earning above 300 percent of the FPG. Table 1, Kyle J. Caswell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), *https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.*

disproportionate, or meaningfully more severe, impact from the pandemic. As discussed in the interim final rule, pre-existing disparities in health and economic outcomes magnified the impact of the COVID–19 public health emergency on certain households and communities. As with the interim final rule, under the final rule recipients may presume that households residing in QCTs or receiving services provided by Tribal governments were disproportionately impacted by the pandemic. In addition, under the final rule recipients may presume that low-income households were disproportionately impacted by the pandemic. Finally, under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted.

Treasury notes that households presumed to be disproportionately impacted would also be presumptively impacted, as these households have not only experienced pandemic impacts but have experienced disproportionate pandemic impacts; as a result, these households are presumptively eligible for responsive services for both impacted and disproportionately impacted households.

Many different geographic, income-based, or poverty-based presumptions could be used to designate disproportionately impacted populations. The combination of permitting recipients to use QCTs, low-income households, and services provided by Tribal or territorial governments as presumptions balances these varying methods. Specifically, QCTs are a commonly used designation of geographic areas based on low incomes or high poverty rates of households in the community; for recipients providing geographically targeted services, QCTs may provide a simple metric with readily available maps for use. However, Treasury recognizes that QCTs do not capture all underserved populations, including for reasons noted by commenters. By allowing recipients to also presume that low-income households were disproportionately impacted, the final rule provides greater flexibility to serve underserved households or communities. Data on household incomes is also readily available at varying levels of geographic granularity (*e.g.,* Census Tracts, counties), again permitting flexibility to adapt to local circumstances and needs. Finally, Treasury notes that, as discussed further below, recipients may also identify other households, populations, and communities disproportionately impacted by the pandemic, in addition to those presumed to be disproportionately impacted.

Additionally, Tribal and territorial governments may face both disproportionate impacts of the pandemic and administrability challenges with operationalizing the income-based standard; therefore, Treasury has presumed that services provided by these governments respond to disproportionate pandemic impacts. Given a lack of regularly published data on household incomes in most territories,[32] as well as a lack of poverty guidelines developed for these jurisdictions,[33] it may be highly challenging to assess disproportionate impact in these communities according to an income- or poverty-based standard. Similarly, data on incomes in Tribal communities are not readily available.[34] Finally, as described in the sections on Public Health and Negative Economic Impacts, Tribal communities have faced particularly severe health and economic impacts of the pandemic. Similarly, available research suggests that preexisting health and economic disparities in the territories amplified the impact of the pandemic on these communities.[35]

Categorical Eligibility

Public Comment: Several commenters suggested that the final rule permit recipients to rely on a beneficiary's eligibility for other federal benefits programs as an easily administrable proxy for identifying a group or population that experienced a negative economic impact as a result of the COVID–19 public health emergency (*i.e.,* categorical eligibility). In other words, a recipient would determine that individuals or households are eligible for an SLFRF-funded program based on the individual or household's eligibility in another program, typically another federal benefit program. Commenters noted that categorical eligibility is a common policy in program administration that can significantly ease administrative burden on both program administrators and beneficiaries.

Treasury Response: Treasury agrees that allowing recipients to identify impacted and disproportionately impacted beneficiaries based on their eligibility for other programs with similar income tests would ease administrative burden. To the extent that the other program's eligibility criteria align with a population or class that experienced a negative economic impact of the pandemic, this approach is also consistent with the process allowed under the final rule for recipients to determine that a class has experienced a negative economic impact, and then document that an individual receiving services is a member of the class. For these reasons, the final rule recognizes categorical eligibility for the following programs and populations:

- *Impacted households.* Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:
  - Children's Health Insurance Program (CHIP)
  - Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
  - Medicaid
  - National Housing Trust Fund (HTF), for affordable housing programs only
  - Home Investment Partnerships Program (HOME), for affordable housing programs only
- *Disproportionately impacted households.* Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:
  - Temporary Assistance for Needy Families (TANF)
  - Supplemental Nutrition Assistance Program (SNAP)
  - Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
  - Medicare Part D Low-income Subsidies
  - Supplemental Security Income (SSI)
  - Head Start and/or Early Head Start
  - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
  - Section 8 Vouchers
  - Low-Income Home Energy Assistance Program (LIHEAP)
  - Pell Grants
  - For services to address educational disparities, Treasury will recognize Title

[32] For instance, the American Community Survey does not include all territories. U.S. Census Bureau, Areas Published, *https://www.census.gov/programs-surveys/acs/geography-acs/areas-published.html* (last visited November 9, 2021).

[33] U.S. Department of Health and Human Services, *supra* note 24.

[34] For instance, data from the American Community Survey is based on geographical location rather than Tribal membership. U.S. Census Bureau, My Tribal Area, *https://www.census.gov/Tribal/Tribal_glossary.php.*

[35] Lina Stoylar et. al., Challenges in the U.S. Territories: COVID–19 and the Medicaid Financing Cliff, Kaiser Family Foundation (May 18, 2021), *https://www.kff.org/coronavirus-covid-19/issue-brief/challenges-in-the-u-s-territories-covid-19-and-the-medicaid-financing-cliff/.*

I eligible schools [36] as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible

c. Standards for Identifying Other Eligible Populations

Standards: Designating Other Impacted Classes

Public Comment: Treasury received multiple comments requesting additional clarification about how classes of impacted individuals may be designated, as well as questions asking whether recipients must demonstrate a specific public health or negative economic impact to each entity served (*e.g.,* each household receiving assistance under a program). There were several comments requesting that specific geographic designations, like a county or Impact Zone, be eligible to use as a determining boundary.

Treasury Response: The interim final rule allowed, and the final rule maintains, the ability for recipients to demonstrate a public health or negative economic impact on a class and to provide assistance to beneficiaries that fall within that class. Consistent with the scope of beneficiaries included in sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act, Treasury is clarifying that a recipient may identify such impacts for a class of households, small businesses, or nonprofits. In such cases, the recipient need only demonstrate that the household, small business, or nonprofit is within the relevant class. For example, a recipient could determine that restaurants in the downtown area had generally experienced a negative economic impact and provide assistance to those small businesses to respond. When providing this assistance, the recipient would only need to demonstrate that the small businesses receiving assistance were restaurants in the downtown area. The recipient would not need to demonstrate that each restaurant served experienced its own negative economic impact.

In identifying an impacted class and responsive program, service, or capital expenditure, recipients should consider the relationship between the definition of the class and proposed response. Larger and less-specific classes are less likely to have experienced similar harms and thus the responses are less likely to be responsive to the harms identified. That is, as the group of entities being served by a program has a wider set of fact patterns, or the type of entities, their circumstances, or their pandemic experiences differ more substantially, it may be more difficult to determine that the class has actually experienced the same or similar negative economic impact and that the response is appropriately tailored to address that impact.

Standard: Designating Other Disproportionately Impacted Classes

Summary of Interim Final Rule: As noted above, the interim final rule provided a broad set of enumerated eligible uses of funds in disproportionately impacted communities, including to address pre-existing disparities that contributed to more severe pandemic impacts in these communities. The interim final rule presumed that these services are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to ''other populations, households, or geographic areas disproportionately impacted by the pandemic'' and, in identifying these disproportionately impacted communities, should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the group identified.

Public Comment: A significant number of commenters expressed uncertainty regarding the process for determining eligibility for disproportionately impacted communities beyond QCTs. A commenter noted that a clearer definition of ''disproportionately impacted'' should be delineated and that any definition should include communities of color and people of limited means. Some commenters suggested a template or checklist to see if an area meets the standard for disproportionately impacted communities outside of QCTs. Some commenters stated that QCT and non-QCT beneficiaries should be treated the same.

Treasury Response: Under the interim final rule, presuming eligibility for services in QCTs, for populations living in QCTs, and for Tribal governments was intended to ease administrative burden, providing a simple path for recipients to offer services in underserved communities, and is not an exhaustive list of disproportionately impacted communities. To further clarify, the final rule codifies the interpretive framework discussed above, including presumptions of groups disproportionately impacted, as well as the ability to identify other disproportionately impacted populations, households, or geographies (referred to here as disproportionately impacted classes).

As discussed in the interim final rule, in identifying other disproportionately impacted classes, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. For example, the interim final rule considered data regarding the rate of COVID–19 infections and deaths in low-income and socially vulnerable communities, noting that these communities have experienced the most severe health impacts, compared to national averages. Similarly, the interim final rule considered the high concentration of low-income workers performing essential work, the reduced ability to socially distance, and other pre-existing public health challenges, all of which correlate with more severe COVID–19 outcomes. The interim final rule also considered the disproportionate economic impacts of the pandemic, citing, for example, the rate of job losses among low-income persons as compared to the general population. The interim final rule then identified QCTs, a common, readily accessible, and geographically granular method of identifying communities with a large proportion of low-income residents, as presumed to be disproportionately impacted by the pandemic.

In other words, the interim final rule identified disproportionately impacted populations by assessing the impacts of the pandemic and finding that some populations experienced meaningfully more severe impacts than the general public. Similarly, to identify disproportionately impacted classes, recipients should compare the impacts experienced by that class to the typical or average impacts of the pandemic in their local area, state, or nationally.

Recipients may identify classes of households, communities, small businesses, nonprofits, or populations that have experienced a disproportionate impact based on academic research or government research publications, through analysis of their own data, or through analysis of other existing data sources. To augment their analysis, or when quantitative data is not readily available, recipients may also consider qualitative research and sources like resident interviews or

[36] *Title I eligible schools* means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

feedback from relevant state and local agencies, such as public health departments or social services departments. In both cases, recipients should consider the quality of the research, data, and applicability of analysis to their determination.

In designing a program or service that responds to a disproportionately impacted class, a recipient must first identify the impact and then identify an appropriate response. To assess disproportionate impact, recipients should rely on data or research that measures the public health or negative economic impact. An assessment of the effects of a response (*e.g.,* survey data on levels of resident support for various potential responses) is not a substitute for an assessment of the impact experienced by a particular class. Data about the appropriateness or desirability of a response may be used to assess the reasonableness of a response, once an impact or disproportionate impact has been identified but should not be the basis for assessing impact.

2. Public Health

Background

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[37] Since that time, and through present day, the United States has faced numerous waves of the virus that have brought acute strain on health care and public health systems. At various points in the pandemic, hospitals and emergency medical services have seen significant influxes of patients; response personnel have faced shortages of personal protective equipment; testing for the virus has been scarce; and congregate living facilities like nursing homes have seen rapid spread.

Since the initial wave of the COVID–19 pandemic, the United States has faced several additional major waves that continued to impact communities and stretch public health services. The summer 2020 wave impacted communities in the south and southwest. As the weather turned colder and people spent more time indoors, a wave throughout fall and winter 2020 impacted communities in almost every region of the country as the virus reached a point of uncontrolled spread and over 3,000 people died per day due to COVID–19.[38]

In December 2020, the Food and Drug Administration (FDA) authorized COVID–19 vaccines for emergency use, and soon thereafter, mass vaccination in the United States began. At the time of the interim final rule publication in May 2021, the number of daily new infections was steeply declining as rapid vaccination campaigns progressed across the country. By summer 2021, COVID–19 cases had fallen to their lowest level since early months of the pandemic, when testing was scarce. However, throughout late summer and early fall, the Delta variant, a more infectious and transmittable variant of the SARS–CoV–2 virus, sparked yet another surge. From June to early September, the seven-day moving average of reported cases rose from 12,000 to 165,000.[39]

As of December 2021, COVID–19 in total has infected over 50 million and killed over 800,000 Americans.[40] Preventing and mitigating the spread of COVID–19 continues to require a major public health response from federal, state, local, and Tribal governments.

First, state, local, and Tribal governments across the country have mobilized to support the national vaccination campaign. As of December 2021, more than 80 percent of adults have received at least one dose, with more than 470 million total doses administered.[41] Additionally, more than 15 million children over the age of 12 have received at least one dose of the vaccine and over 47 million people have received a booster dose.[42] Vaccines for younger children, ages 5 through 11, have been approved and are reaching communities and families across the country. As new variants continue to emerge globally, the national effort to administer vaccinations and other COVID–19 mitigation strategies will be a critical component of the public health response.

In early reporting on uses of SLFRF funds, recipients have indicated that they plan to put funds to immediate use to support continued vaccination campaigns. For example, one recipient has indicated that it plans to use SLFRF funds to support a vaccine incentive program, providing $100 gift cards to residents at community vaccination clinics. The program aimed to target communities with high public health needs.[43] Another recipient reported that it is partnering with multiple agencies, organizations, and providers to distribute COVID–19 vaccinations to homebound residents in assisted living facilities.[44]

State, local, and Tribal governments have also continued to execute other aspects of a wide-ranging public health response, including increasing access to COVID–19 testing and rapid at-home tests, contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (*e.g.,* monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs.

State, local, and Tribal governments have also supported major efforts to prevent COVID–19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included, for example, implementing infection prevention measures or making ventilation improvements.

In particular, state, local, and Tribal governments have mounted significant efforts to safely reopen schools. A key factor in school reopening is the ability to implement COVID–19 mitigation strategies such as providing masks and other hygiene resources, improving air-quality and ventilation, increasing outdoor learning and eating spaces, testing and contact tracing protocols, and a number of other measures.[45] For example, one recipient described plans to use SLFRF funds to further invest in school health resources that were critical components of school reopening and reducing the spread of COVID–19 in schools. Those investments include the increasing school nurses and social

[37] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), *https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.*

[38] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases* (last visited December 7, 2021).

[39] *Id.*

[40] Centers for Disease Control and Prevention, COVID Data Tracker, *http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited December 31, 2021).

[41] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited December 7, 2021).

[42] *Id.*

[43] Columbus, Ohio Recovery Plan, *https://www.columbus.gov/recovery/.*

[44] Luzerne County, Pennsylvania Recovery Plan, *https://www.luzernecounty.org/DocumentCenter/View/26304/Final-Interim-Recovery-Plan-Performance-Report-83121.*

[45] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Guidance for COVID–19 Prevention in K–12 Schools (November 5, 2021), *available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html.*

workers, improved ventilation systems, and other health and safety measures.

The need for public health measures to respond to COVID–19 will continue moving forward. This includes the continuation of vaccination campaigns for the general public, booster doses, and children. This also includes monitoring the spread of COVID–19 variants, understanding the impact of these variants, developing approaches to respond, and monitoring global COVID–19 trends. Finally, the long-term health impacts of COVID–19 will continue to require a public health response, including medical services for individuals with ''long COVID,'' and research to understand how COVID–19 impacts future health needs and raises risks for the tens of millions of Americans who have been infected.

The COVID–19 pandemic also negatively impacted other areas of public health, particularly mental health and substance use. In January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[46] The mental health impacts of the pandemic have been particularly acute for adults ages 18 to 24, racial and ethnic minorities, caregivers for adults, and essential workers, with all reporting significantly higher rates of considering suicide.[47] The proportion of children's emergency department visits related to mental health has also risen noticeably.[48] Similarly, rates of substance use and overdose deaths have spiked: Preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from April 2020 to April 2021, bringing the estimated overdose death toll for a 12-month period over 100,000 for the first time ever.[49] The CDC also found that 13 percent of adults started or increased substance use to cope with stress related to COVID–19 and 26 percent reported having symptoms of trauma- and stressor-related disorder (TRSD) related to the pandemic.[50]

Another public health challenge exacerbated by the pandemic was violent crime and gun violence, which increased during the pandemic and has disproportionately impacted low-income communities.[51] According to the Federal Bureau of Investigation (FBI), although the property crime rate fell 8 percent in 2020, the violent crime rate increased 6 percent in 2020 compared to 2019 data.[52] In particular, the estimated number of aggravated assault offenses rose 12 percent, while murder and manslaughter increased 30 percent from 2019 to 2020.[53] The proportion of homicides committed with firearms rose from 73 percent in 2019 to 76 percent in 2020.[54] Exposure to violence can create serious short-term and long-term harmful effects to health and development, and repeated exposure to violence may be connected to negative health outcomes.[55] Addressing community violence as a public health issue may help prevent and even reduce additional harm to individuals, households, and communities.[56]

Many communities are using SLFRF funds to invest in holistic approaches in violence prevention that are rooted in targeted outreach and addressing root causes. For example, the City of St. Louis is planning to invest in expanding a ''community responder'' model designed to provide clinical help and to divert non-violent calls away from the police department. Additionally, the city will expand access to mental health services, allowing residents to seek support at city recreation centers, libraries, and other public spaces.[57] Similarly, Los Angeles County will further invest in its ''Care First, Jails Last'' program which seeks to replace ''arrest and incarceration'' responses with health interventions.[58]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[59] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID–19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[60]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 308 deaths per 100,000 compared to the U.S. average of 238 deaths per 100,000, as of December 2021.[61] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national average, with 325 deaths per 100,000 as of December 2021.[62] Over the course of the

[46] Nirmita Panchal et al., The Implications of COVID–19 for Mental Health and Substance Abuse (Feb. 10, 2021), *https://www.kff.org/coronavirus covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/#:~:text= Older%20adults%20are%20also%20 more, prior%20to%20the%20current%20crisis;* Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID–19 Pandemic—United States, June 24–30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049–57 (Aug. 14, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.*

[47] *Id.*

[48] Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic—United States, January 1–October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675–80 (Nov. 13, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.*

[49] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (last visited May 8 December 6, 2021).

[50] Panchal, *supra* note 46; Mark É. Czeisler et al., *supra* note 46.

[51] The White House, FACT SHEET: More Details on the Biden-Harris Administration's Investments in Community Violence Interventions (April 7, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-more-details-on-the-biden-harris-administrations-investments-in-community-violence-interventions/.*

[52] Federal Bureau of Investigation, FBI Releases 2020 Crime Statistics (September 27, 2021) *https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2020-crime-statistics.*

[53] *Id.*

[54] *Id.*

[55] The Educational Fund to Stop Gun Violence, Community Gun Violence, *https://efsgv.org/learn/type-of-gun-violence/community-gun-violence/* (last visited November 9, 2021).

[56] Giffords Law Center, Healing Communities in Crisis: Lifesaving Solutions to the Urban Gun Violence Epidemic (March 2016), *https://giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf.*

[57] St. Louis, MO Recovery Plan, *https://www.stlouis-mo.gov/government/recovery/covid-19/arpa/plan/.*

[58] Los Angeles County, CA Recovery Plan, *http://file.lacounty.gov/SDSInter/bos/supdocs/160391.pdf.*

[59] Office of the White House, National Strategy for the COVID–19 Response and Pandemic Preparedness (Jan. 21, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.*

[60] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID–19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID–19 Hospitalizations, by Region—United States, March–December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560–565 (Apr. 16, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.*

[61] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by County-level Population Factors, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited December 7, 2021).

[62] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID–19 Cases and Deaths in the United States, by Social

Continued

pandemic, Native Americans have experienced more than one and a half times the rate of COVID–19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[63] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID–19 mortality.[64] In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who face greater risk of exposure.[65]

Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while screenings for elevated blood lead levels declined during the pandemic.[66] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[67]

Summary of the Interim Final Rule Approach to Public Health

Summary: As discussed above, the interim final rule provided flexibility for recipients to pursue a wide range of eligible uses to ''respond to'' the COVID–19 public health emergency. Uses of funds to ''respond to'' the public health emergency address the SARS-CoV–2 virus itself, support efforts to prevent or decrease spread of the virus, and address other impacts of the pandemic on public health. The interim final rule implemented these provisions by identifying a non-exhaustive list of programs or services that may be funded as responding to COVID–19 (''enumerated eligible uses''), along with considerations for evaluating other potential uses of funds not explicitly listed. Enumerated eligible uses are discussed below. For guidance on how to determine whether a particular use is allowable, beyond those enumerated, see section Standards: Identifying a Public Health Impact.

Enumerated eligible uses under this section built and expanded upon permissible expenditures under the Coronavirus Relief Fund; for clarity, the interim final rule expressly listed as eligible uses the uses permissible under the Coronavirus Relief Fund, with minor exceptions.[68] The interim final rule also recognized that the nature of the COVID–19 public health emergency, and responsive policy measures, programs, and services, had changed over time and is expected to continue evolving.

The interim final rule categorized enumerated eligible uses to respond to the public health emergency into several categories: (1) COVID–19 mitigation and prevention, (2) medical expenses, (3) behavioral health care, (4) public health and safety staff, (5) expenses to improve the design and execution of health and public health programs, and (6) eligible uses to address disparities in public health outcomes. For each category in turn, this section describes public comments received and Treasury's responses, as well as comments received proposing additional enumerated eligible uses.

Reorganizations and Cross-References: In some cases, enumerated eligible uses included in the interim final rule under responding to the public health emergency have been re-categorized in the organization of the final rule to enhance clarity. For discussion of eligible uses for public health and safety staff and to improve the design and execution of public health programs, please see section Public Sector Capacity and Workforce in General Provisions: Other. For discussion of eligible uses to address disparities in public health outcomes, please see section Assistance to Households in Negative Economic Impacts.

Conversely, discussion of eligible assistance to small businesses and nonprofits to respond to public health impacts has been moved from Assistance to Small Businesses and Assistance to Nonprofits in Negative Economic Impacts to this section. This change is consistent with the interim final rule, which provides that appropriate responses to address the public health impacts of COVID–19 may be provided to any type of entity.

a. COVID–19 Mitigation and Prevention

COVID–19 public health response and mitigation tactics. Recognizing the broad range of services and programming needed to contain COVID–19, the interim final rule provided an extensive list of enumerated eligible uses to prevent and mitigate COVID–19 and made clear that the public health response to the virus is expected to continue to evolve over time, necessitating different uses of funds.

Enumerated eligible uses of funds in this category included: Vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (*e.g.,* monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (*e.g.,* nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of

Vulnerability Index, *https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths* (last visited December 7, 2021).

[63] Centers for Disease Control and Prevention, Risk for COVID–19 Infection, Hospitalization, and Death By Race/Ethnicity, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html* (last visited December 7, 2021).

[64] *See, e.g.,* Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID–19 (Dec. 10, 2020), *https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html* (last visited December 7, 2021).

[65] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID–19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249;* Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388–90 (2020), *available at https://jamanetwork.com/journals/jama/fullarticle/2767630.*

[66] *See, e.g.,* Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID–19—34 Jurisdictions, January–May 2020, Morb. Mort. Wkly. Rep. 70(5):155–61 (Feb. 5, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm;* Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID–19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), *https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.*

[67] *See, e.g.,* Centers *for Disease Control and Prevention, supra note 62;* Benfer & Wiley, *supra* note 66; Nathaniel M. Lewis et al., Disparities in COVID–19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation—Utah, March 3–July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369–73 (Sept. 25, 2020), *https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.*

[68] Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID–19 will continue to be eligible under the ARPA, including those not explicitly listed in the final rule, with the following two exceptions: (1) The standard for eligibility of public health and safety payrolls has been updated (see section Public Sector Capacity and Workforce in General Provisions: Other) and (2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see section Restrictions on Use: Debt Service).

public health data systems; other public health responses; and capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID–19 mitigation tactics. These enumerated uses are consistent with guidance from public health authorities, including the CDC.

Public Comment: Many commenters were supportive of expansive enumerated eligible uses for mitigating and preventing COVID–19, noting the wide range of activities that governments may undertake and the continued changing landscape of pandemic response. Some commenters requested that Treasury engage in ongoing consideration of and consultation on evolving public health needs and resulting eligible expenses. Some commenters noted that their jurisdiction does not have an official public health program, for example smaller jurisdictions or those that do not have a health department, and requested clarification on whether their public health expenses would still be eligible in compliance with program rules.

Treasury Response: In the final rule, Treasury is maintaining an expansive list of enumerated eligible uses to mitigate and prevent COVID–19, given the wide-ranging activities that governments may take to further these goals, including ''other public health responses.'' Note that the final rule discusses several of these enumerated uses in more detail below.

Treasury is further clarifying that when providing COVID–19 prevention and mitigation services, recipients can identify the impacted population as the general public. Treasury presumes that all enumerated eligible uses for programs and services, including COVID–19 mitigation and prevention programs and services, are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID–19 prevention or mitigation service to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

This approach gives recipient governments an extensive set of eligible uses that can adapt to local needs, as well as evolving response needs and developments in understanding of transmission of COVID–19. Treasury emphasizes how the enumerated eligible uses can adapt to changing circumstances. For example, when the interim final rule was released, national daily COVID–19 cases were at relatively low levels and declining;[69] as the Delta variant spread and cases peaked in many areas of the country, particularly those with low vaccination rates, government response needs and tactics evolved, and the SLFRF funds provided the ability to quickly and nimbly adapt to new public health needs. Treasury also notes that funds may be used to support compliance with and implementation of COVID–19 safety requirements, including vaccination requirements, testing programs, or other required practices.

Recipient governments do not need to have an official health or public health program in order to utilize these eligible uses; any recipient can pursue these eligible uses, though Treasury recommends consulting with health and public health professionals to support effective implementation.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID–19. The interim final rule and final rule help support recipients in stopping the spread of COVID–19 through these recommendations and guidelines.[70] The final rule reflects changing circumstances of COVID–19 and provides a broad range of permissible uses for mitigating and preventing the spread of the disease, in a manner consistent with CDC guidelines and recommendations.

The purpose of the SLFRF funds is to mitigate the fiscal effects stemming from the COVID–19 public health emergency, including by supporting efforts to stop the spread of the virus. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID–19 mitigation and prevention.[71] A program or service that imposes conditions on participation in or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID–19 is not a permissible use of funds. In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID–19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (*e.g.,* paying off fines to businesses incurred for violation of COVID–19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (*e.g.,* requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Vaccination programs and vaccine incentives. At the time of the interim final rule release, many vaccination programs were using mass vaccination tactics to rapidly reach Americans en masse for first vaccine doses.[72] Since that time, the FDA has authorized booster vaccine doses for certain groups and certain vaccines and has also authorized vaccines for youths[73] [74] The inclusion of ''vaccination programs'' as an eligible use allows for adaptation as the needs of programs change or new groups become eligible for different types of vaccinations.

Public Comment: Since the release of the interim final rule, many recipient governments have also requested clarification on whether vaccine incentives are a permissible use of funds.

Treasury Response: Treasury issued guidance clarifying that ''[vaccine] programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable

[69] *See* Centers for Disease Control and Prevention, COVID Data Tracker, *https://covid.cdc.gov/covid-data-tracker/#trends_dailycases* (last visited December 7, 2021).

[70] *See* Centers for Disease Control and Prevention, COVID–19, *https://www.cdc.gov/coronavirus/2019-ncov/index.html* (last visited November 8, 2021).

[71] *See* § 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

[72] Centers for Disease Control and Prevention, COVID Data Tracker: COVID–19 Vaccinations in the United States, *https://covid.cdc.gov/covid-data-tracker/#vaccinations* (last visited October 18, 2021).

[73] U.S. Food and Drug Administration, Coronavirus (COVID–19) Update: FDA Takes Additional Actions on the Use of a Booster Dose for COVID–19 Vaccines, *https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age* (last visited November 8, 2021).

[74] U.S. Food and Drug Administration, FDA Authorizes Pfizer-BioNTech COVID–19 Vaccine for Emergency Use in Children 5 through 11 Years of Age, *https://www.fda.gov/news-events/press-announcements/fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use-children-5-through-11-years-age* (last visited November 8, 2021).

use of funds so long as such costs are reasonably proportional to the expected public health benefit.'' [75] This use of funds remains permissible under the final rule.

Capital Expenditures

Public Comment: Many commenters requested clarification around the types and scope of permissible capital investments in public facilities to meet pandemic operational needs; ventilation improvements in congregate settings, health care settings, or other key locations; and whether support for prevention and mitigation in congregate facilities could include facilities renovations, improvements, or construction of new facilities, or if the facilities must solely be used for COVID–19 response.

Treasury Response: For clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. In recognition of the importance of capital expenditures in the COVID–19 public health response, Treasury enumerates that the following projects are examples of eligible capital expenditures, as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other:

- Improvements or construction of COVID–19 testing sites and laboratories, and acquisition of related equipment;
- Improvements or construction of COVID–19 vaccination sites;
- Improvements or construction of medical facilities generally dedicated to COVID–19 treatment and mitigation (*e.g.,* emergency rooms, intensive care units, telemedicine capabilities for COVID–19 related treatment);
- Expenses of establishing temporary medical facilities and other measures to increase COVID–19 treatment capacity, including related construction costs;
- Acquisition of equipment for COVID–19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment;
- Improvements to or construction of emergency operations centers and acquisition of emergency response equipment (*e.g.,* emergency response radio systems);
- Installation and improvements of ventilation systems;
- Costs of establishing public health data systems, including technology infrastructure;
- Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities for the purpose of mitigating spread of COVID–19 in the facility); and
- Mitigation measures in small businesses, nonprofits, and impacted industries (*e.g.,* developing outdoor spaces).

Other clarifications on COVID–19 mitigation: Medical care, supports for vulnerable populations, data systems, carceral settings. Based on public comments and questions received from recipients following the interim final rule, Treasury is making several further clarifications on enumerated eligible uses in this category.

Public Comment: Several commenters requested clarification on eligible uses of funds for medical care; Treasury addresses those comments in the section Medical Expenses below.

Public Comment: Recipients posed questions on the type and scope of activities eligible as ''supports for vulnerable populations to access medical or public health services.''

Treasury Response: Enumerated eligible uses should be considered in the context of the eligible use category or section where they appear; in this case, ''supports for vulnerable populations to access medical or public health services'' appears in the section COVID–19 Mitigation and Prevention. As such, these eligible uses should help vulnerable or high-risk populations access services that mitigate COVID–19, for example, transportation assistance to reach vaccination sites, mobile vaccination or testing programs, or on-site vaccination or testing services for homebound individuals, those in group homes, or similar settings.

Public Comment: Some commenters asked whether ''enhancement of public health data systems'' could include investments in software, databases, and other information technology resources that support responses to the COVID–19 public health emergency but also provide benefits for other use cases and long-term capacity of public health departments and systems.

Treasury Response: These are permissible uses of funds under the interim final rule and remain eligible under the final rule.

Assistance to Businesses and Nonprofits To Implement COVID–19 Mitigation Strategies

Background: As detailed above, Treasury received many public comments describing uncertainty about which eligible use category should be used to assess different potential uses of funds. As a result, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity, consistent with the principle that uses of funds should be assessed based on their intended beneficiary. For example, COVID–19 mitigation and prevention serves the general public or specific populations within the public. However, in the interim final rule, assistance to small businesses, nonprofits, and impacted industries to implement COVID–19 mitigation and prevention strategies was categorized in the respective sections within Negative Economic Impacts. The final rule consolidates all COVID–19 mitigation and prevention within Public Health.

Public Comment: Treasury has received multiple comments and questions about which eligible use permits the recipient to provide assistance to businesses and nonprofits to address the public health impacts of COVID–19.

Treasury Response: In the final rule, these services have been re-categorized under COVID–19 mitigation and prevention to reflect the fact that this assistance responds to public health impacts of the pandemic rather than the negative economic impacts to a small business, nonprofit, or impacted industry. When providing COVID–19 mitigation and prevention services, recipients can identify the impacted entity as small businesses, nonprofits, or businesses in impacted industries in general. As with all enumerated eligible uses, recipients may presume that all COVID–19 mitigation and prevention programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. Note that capital expenditures are not considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other. In other words, recipients can provide any COVID–19 prevention or mitigation service to small businesses, nonprofits, and businesses in impacted

[75] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.* Note that programs may provide incentives to individuals who have already received a vaccination if the incentive is reasonably expected to increase the number of people who choose to get vaccinated or motivate people to get vaccinated sooner and the costs are reasonably proportional to the expected public health benefit.

industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive.

In some cases, this means that an entity not otherwise eligible to receive assistance to respond to negative economic impacts of the pandemic, for example an entity that did not experience a negative economic impact, may still be eligible to receive assistance under this category for COVID–19 mitigation and prevention services.

Uses of funds can include loans, grants, or in-kind assistance to small businesses, nonprofits, or other entities to implement COVID–19 prevention or mitigation tactics, such as vaccination; testing; contact tracing programs; physical plant changes to enable greater use of outdoor spaces or ventilation improvements; enhanced cleaning efforts; and barriers or partitions. For example, this would include assistance to a restaurant to establish an outdoor patio, given evidence showing much lower risk of COVID–19 transmission outdoors.[76] Uses of funds can also include aid to travel, tourism, hospitality, and other impacted industries to implement COVID–19 mitigation and prevention measures to enable safe reopening, for example, vaccination or testing programs, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

Recipients providing assistance to small businesses, nonprofits, or impacted industries that includes capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans Made with SLFRF Funds in General Provisions: Other.

Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with small businesses, nonprofits, or impacted industries. As noted above, Treasury presumes that the general public, as well as small businesses, nonprofits, and impacted industries in general, has been impacted by the COVID–19 disease itself and is eligible for services that mitigate or prevent COVID–19 spread. As such, a small business, nonprofit, or impacted industry receiving assistance to implement COVID–19 mitigation measures is a beneficiary of assistance (*e.g.,* granting funds to a small business to develop an outdoor patio to reduce transmission). In contrast, if a recipient contracts with, or grants funds to, a small business, nonprofit, or impacted industry to carry out an eligible use for COVID–19 mitigation on behalf of the recipient, the entity is a subrecipient (*e.g.,* contracting with a small business to operate COVID–19 vaccination sites). For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Distinguishing Subrecipients versus Beneficiaries.

b. Medical Expenses

Background: The interim final rule also included as an enumerated eligible use medical expenses, including medical care and services to address the near-term and potential longer-term impacts of the disease on individuals infected.

Public Comment: Some commenters sought clarification on the types of medical expenses eligible and for whom, including whether funds could be used under this category for expanding health insurance coverage (*e.g.,* subsidies for premiums, expanding a group health plan), improvements to healthcare facilities or establishment of new medical facilities, direct costs of medical services, and costs to a self-funded health insurance plan (*e.g.,* a county government health plan) for COVID–19 medical care.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers costs related to medical care provided directly to an individual due to COVID–19 infection (*e.g.,* treatment) or a potential infection (*e.g.,* testing). This can include medical costs to uninsured individuals; deductibles, co-pays, or other costs not covered by insurance; costs for uncompensated care at a health provider; emergency medical response costs; and, for recipients with a self-funded health insurance plan, excess health insurance costs due to COVID–19 medical care. These are medical expenses due to COVID–19 and distinguish this category of eligible uses from other related eligible uses, like COVID–19 mitigation and prevention and health insurance expenses to households, to provide greater clarity for recipients in determining which category of eligible uses they should review to assess a potential use of funds. For discussion of eligibility for programs to expand health insurance coverage, see section Assistance to Households.

c. Behavioral Health Care

Background: Recognizing that the public health emergency, necessary mitigation measures like social distancing, and the economic downturn have exacerbated mental health and substance use challenges for many Americans, the interim final rule included an enumerated eligible use for mental health treatment, substance use treatment, and other behavioral health services, including a non-exhaustive list of specific services that would be eligible under this category.

Public Comment: Many commenters expressed support for the interim final rule's recognition of behavioral health impacts of the pandemic and eligible uses under this category. Several commenters requested clarification on the types of eligible services under this category, specifically whether both acute and chronic care are included as well as services that often do not directly accept insurance payments, like peer support groups. Some commenters highlighted the importance of cultural competence in providing effective behavioral health services. Some commenters suggested that funding should be available broadly and quickly for this purpose, recommending that funding available for behavioral health not be tied to the amount of revenue loss experienced by the recipient.

Treasury Response: In the final rule, Treasury is maintaining this enumerated eligible use category and clarifying that it covers an expansive array of services for prevention, treatment, recovery, and harm reduction for mental health, substance use, and other behavioral health challenges caused or exacerbated by the public health emergency. The specific services listed in the interim final rule also remain eligible.[77]

Treasury is further clarifying that when providing behavioral health services, recipients can identify the impacted population as the general public and, as with all enumerated eligible uses, presume that all programs and services are reasonably proportional responses to the harm identified unless a response is grossly disproportionate to the type or extent of harm experienced. In contrast, capital expenditures are not

[76] *See* Centers for Disease Control and Prevention, Participate in Outdoor and Indoor Activities, *https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/outdoor-activities.html* (last visited November 8, 2021).

[77] Hotlines or warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

considered ''programs and services'' and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: Other.

In other words, recipients can provide behavioral health services to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive. Recipients may also use this eligible use category to respond to increased rates of behavioral health challenges at a population level or, at an individual level, new behavioral health challenges or exacerbation of pre-existing challenges, including new barriers to accessing treatment.

Services that respond to these impacts of the public health emergency may include services across the continuum of care, including both acute and chronic care, such as prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs (*e.g.,* from emergency departments or criminal justice system involvement), outreach to individuals not yet engaged in treatment, harm reduction, and supports for long-term recovery (*e.g.,* peer support or recovery coaching, housing, transportation, employment services).

Recipients may also provide services for special populations, for example, enhanced services in schools to address increased rates of behavioral health challenges for youths, mental health first responder or law enforcement-mental health co-responder programs to divert individuals experiencing mental illness from the criminal justice system, or services for pregnant women with substance use disorders or infants born with neonatal abstinence syndrome. Finally, recipients may use funds for programs or services to support equitable access to services and reduce racial, ethnic, or socioeconomic disparities in access to high-quality treatment.

Eligible uses of funds may include services typically billable to insurance [78] or services not typically billable to insurance, such as peer support groups, costs for residence in supportive housing or recovery housing, and the 988 National Suicide Prevention Lifeline or other hotline services. Recipients may also use funds in conjunction with other federal grants or programs (see section Program Administration Provisions), though eligible services under SLFRF are not limited to those eligible under existing federal programs.

Given the public health emergency's exacerbation of the ongoing opioid and overdose crisis, Treasury highlights several ways that funds may be used to respond to opioid use disorder and prevent overdose mortality.[79] Specifically, eligible uses of funds include programs to expand access to evidence-based treatment like medications to treat opioid use disorder (*e.g.,* direct costs or incentives for emergency departments, prisons, jails, and outpatient providers to offer medications and low-barrier treatment), naloxone distribution, syringe service programs, outreach to individuals in active use, post-overdose follow up programs, programs for diversion from the criminal justice system, and contingency management interventions.

Finally, for clarity, Treasury has addressed the eligibility standard for capital expenditures, or investments in property, facilities, or equipment, in one section of this Supplementary Information; see section Capital Expenditures in General Provisions: Other. Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (*e.g.,* inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section.

d. Preventing and Responding to Violence

Background: The interim final rule highlighted that some types of violence had increased during the pandemic and that the ability of victims to access services had decreased, noting as an example the challenges that individuals affected by domestic violence face in accessing services. Accordingly, the interim final rule enumerated as an eligible use, in disproportionately impacted communities, evidence-based community violence intervention programs. Following the release of the interim final rule, Treasury received several recipient questions regarding whether and how funds may be used to respond to an increase in crime, violence, or gun violence in some communities during the pandemic. Treasury released further guidance identifying how enumerated eligible uses and eligible use categories under the interim final rule could support violence reduction efforts, including rehiring public sector staff, behavioral health services, and services to address negative economic impacts of the pandemic that may aid victims of crime. The guidance also identified an expanded set of enumerated eligible uses to address increased gun violence.

Public Comment: Several commenters expressed support for this use of funds.

Treasury Response: In the final rule, Treasury is maintaining enumerated eligible uses in this area and clarifying how to apply eligibility standards. Throughout the final rule, enumerated eligible uses should respond to an identified impact of the COVID–19 public health emergency in a reasonably proportional manner to the extent and type of harm experienced. Many of the enumerated eligible uses—like behavioral health services, services to improve employment opportunities, and services to address educational disparities in disproportionately impacted communities—that respond to the public health and negative economic impacts of the pandemic may also have benefits for reducing crime or aiding victims of crime. For example, the pandemic exacerbated the impact of domestic violence, sexual assault, and human trafficking; enumerated eligible uses like emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs could be used to support survivors of domestic violence, sexual assault, or human trafficking who experienced public health or economic impacts due to the pandemic.

Public Comment: Several commenters expressed support for community violence intervention programs or argued that traditional public safety approaches had negatively impacted the social determinants of health in their communities. Several commenters recommended inclusion of approaches like mental health or substance use diversion programs.

Treasury Response: Treasury recognizes the importance of comprehensive approaches to challenges like violence. The final rule includes an enumerated eligible use for community violence intervention programs in all communities, not just the disproportionately impacted communities eligible under the interim final rule. Given the increased rate of violence during the pandemic, Treasury has determined that this enumerated

[78] However, SLFRF funds may not be used to reimburse a service that was also billed to insurance.

[79] In line with the Department of Health and Human Services, Overdose Prevention Strategy, *https://www.hhs.gov/overdose-prevention/,* and the Office of National Drug Control Policy, Administration's Statement on Drug Policy Priorities for Year One (April 1, 2021), *https://www.whitehouse.gov/wp-content/uploads/2021/03/BidenHarris-Statement-of-Drug-Policy-Priorities-April-1.pdf.*

eligible use is responsive to the impacts of the pandemic in all communities. The final rule incorporates guidance issued after the interim final rule on specifically types of services eligible, including:

• Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and

• Capacity-building efforts at community violence intervention programs like funding more intervention workers, increasing their pay, providing training and professional development for intervention workers, and hiring and training workers to administer the programs.

Public Comment: Some commenters sought further clarification on whether some of the enumerated eligible uses are considered responsive to all crime, violent crime, or gun violence.

Treasury Response: Enumerated eligible uses that respond to an increase in gun violence may be pursued in communities experiencing an increase in gun violence associated with the pandemic, specifically: (1) Hiring law enforcement officials—even above pre-pandemic levels—or paying overtime where the funds are directly focused on advancing community policing strategies for gun violence, (2) additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels, and (3) investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic, for example technology to assist in the identification of guns whose serial numbers have been damaged.

3. Negative Economic Impacts

a. Assistance to Households

Background

While the U.S. economy is now on the path to a strong recovery, the public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 22 million jobs were lost in March and April 2020.[80] One year later, in April 2021, the economy still remained over 8 million jobs below its pre-pandemic peak,[81] and the unemployment rate hovered around 6 percent.[82]

In the months since Treasury issued the interim final rule in May 2021, the economy has made large strides in its recovery. The economy gained over 4 million jobs in the seven months from May to November 2021;[83] the unemployment rate fell more than 1.5 percentage points to 4.2 percent, which is the lowest rate since February 2020;[84] and the size of the nation's economy surpassed the pre-pandemic peak in the second quarter of 2021.[85]

While the economy has made immense progress in its recovery since May 2021, the economy has also faced setbacks that illustrate the continued risks to the recovery. As the Delta variant spread across the country this summer and fall, the United States faced another severe wave of cases, deaths, and strain on the healthcare system, which contributed to a slowdown in the pace of recovery in the third quarter.[86] Supply chain disruptions have also demonstrated the difficulties of restarting a global economy.[87] Moreover, although many Americans have returned to work as of November 2021, the economy remains 3.9 million jobs below its pre-pandemic peak,[88] and 2.4 million workers have dropped out of the labor market altogether relative to February 2020.[89] Thus, despite much progress, there is a continued need to respond to the pandemic's economic effects to ensure a full, broad-based, and equitable recovery.

Indeed, the pandemic's economic impacts continue to affect some demographic groups more than others. Rates of unemployment remain particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United States was 4.2 percent in November 2021, but certain groups saw much higher rates: 6.7 percent for Black workers, 5.2 percent for Hispanic or Latino workers, and 5.7 percent for workers without a high school diploma.[90] Job losses have also been particularly steep among low-wage workers, with these workers remaining furthest from recovery as of the end of 2020.[91] A severe recession, and its concentrated impact among low-income workers, has amplified food and housing insecurity, with an estimated nearly 20 million adults living in households where there is sometimes or often not enough food to eat and an estimated 12 million adults living in households that were not current on rent.[92]

While economic effects have been seen across many communities, there are additional disparities by race and income. For example, approximately

[80] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/PAYEMS* (last visited December 7, 2021).

[81] *Id.*

[82] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/UNRATE* (last visited December 7, 2021).

[83] U.S. Bureau of Labor Statistics, *supra* note 80.

[84] U.S. Bureau of Labor Statistics, *supra* note 82.

[85] U.S. Bureau of Economic Analysis, Real Gross Domestic Product [GDPC1], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/GDPC1* (last visited December 7, 2021).

[86] U.S. Department of the Treasury, Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee (November 1, 2021), available at *https://home.treasury.gov/news/press-releases/jy0453.*

[87] Yuka Hayashi, IMF Cuts Global Growth Forecast Amid Supply-Chain Disruptions, Pandemic Pressures, Wall Street Journal (October 12, 2021), available at *https://www.wsj.com/articles/imf-cuts-global-growth-forecast-amid-supply-chain-disruptions-warns-of-inflation-risks-11634043601.*

[88] U.S. Bureau of Labor Statistics, *supra* note 80.

[89] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CLF16OV* (last visited December 7, 2021).

[90] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (December 6, 2021), *https://www.bls.gov/news.release/empsit.t01.htm* (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (December 6, 2021), *https://www.bls.gov/web/empsit/cpseea04.htm* (last visited December 7, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (December 6, 2021), *https://www.bls.gov/web/empsit/cpseea05.htm* (last visited December 7, 2021).

[91] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), *https://files.epi.org/pdf/219418.pdf. See also,* Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID–19 Pandemic using Business and Household Survey Microdata, U.S. Bureau of Labor Statistics Working Paper Series (July 2021), *https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.*

[92] Center on Budget and Policy Priorities, Tracking the COVID–19 Recession's Effects on Food, Housing, and Employment Hardships, *https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and* (last visited December 17, 2021).

half of low-income, Black, and Hispanic parents reported difficulty covering costs related to food, housing, utility, or medical care.[93] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without childcare during the day.[94] Women of color have been hit especially hard: The labor force participation rate for Black women has fallen by 3.6 percentage points[95] during the pandemic as compared to 1.3 percentage points for Black men[96] and 1.7 percentage points for White women.[97]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[98] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores[99] and reduced familial and childhood wellbeing.[100] These potential long-term economic consequences underscore the continued need for robust policy support.

Low- and moderate-income households, those with income levels at or below 300 percent of the federal poverty level (FPL), face particular hardships and challenges. These households report much higher rates of food insecurity and housing hardships than households with higher incomes. For example, households with incomes at or below 300 percent FPL are several times more likely to have reported struggling with food insecurity compared to households with income above 300 percent FPL.[101] Similarly, low- and moderate-income households reported being housing insecure[102] at rates more than twice as high as higher-income households, and low- and moderate-income households reported housing quality hardship[103] at rates statistically significantly greater than the rate for higher-income households.[104] The economic crisis caused by the pandemic worsened economic outcomes for workers in many low- and moderate-income households. Industries that employed low-wage workers experienced a disproportionate level of job loss. For example, from February 2020 to February 2021, the hospitality and leisure industry lost nearly 3.5 million jobs.[105] While the entire industry was impacted, 72 percent of the job losses occurred in the lowest wage service occupations compared to only a 6 percent rate of job loss in the highest wage management and finance jobs.[106] Similar trends exist in other heavily impacted industries. In public education, the lowest wage occupations, service and transportation jobs, saw a job loss rate of 20 and 26 percent, respectively.[107] During that same time period, the highest wage occupations in public education, management, actually saw jobs increase by 7 percent.[108]

While many households suffered negative economic outcomes as a result of the COVID–19 pandemic and economic recession, households with low incomes were impacted in disproportionate and exceptional ways. From January 2020 to March 2021, low-wage workers experienced job loss at a rate five times higher than middle-wage workers, and high-wage workers actually experienced an increase in job opportunities.[109] Because workers in low-income households were more likely to lose their job or experience reductions in pay, those same households were also more likely to experience economic hardships like trouble paying utility bills, affording rent or mortgage payments, purchasing food, and paying for medical expenses.[110] The disproportionate negative impacts the pandemic has had on low-income families extend beyond financial insecurity. For example, low-income families have reported higher levels of social isolation, stress, and other negative mental health outcomes during the pandemic. While over half of all U.S. adults report that their mental health was negatively affected by the pandemic, adults with low incomes reported major negative mental health impacts at a rate nearly twice that of adults with high incomes.[111]

[93] Michael Karpman, Dulce Gonzalez, Genevieve M. Kenney, Parents Are Struggling to Provide for Their Families during the Pandemic, Urban Institute (May 2020), *https://www.urban.org/research/publication/parents-are-struggling-provide-their-families-during-pandemic?utm_source=urban_researcher&utm_medium=email&utm_campaign=covid_parents&utm_term=lhp.*

[94] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. *See, e.g.,* Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), *available at https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at https://www.nber.org/papers/w26947.*

[95] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300032* (last visited December 7, 2021).

[96] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300031* (last visited December 7, 2021).

[97] U.S. Bureau of Labor Statistics, Labor Force Participation Rate—20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/LNS11300029* (last visited December 7, 2021).

[98] *See, e.g.,* Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2011), *https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.*

[99] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession, National Consumer Law Center (Dec. 2013), *https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.*

[100] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at https://www.russellsage.org/publications/children-great-recession.*

[101] Kyle J. Casewell and Stephen Zuckerman, Food Insecurity, Housing Hardship, and Medical Care Utilization, Urban Institute (June 2018), available at *https://www.urban.org/sites/default/files/publication/98701/2001896_foodinsecurity_housinghardship_medicalcareutilization_finalized.pdf.*

[102] Housing insecurity is defined as not paying the full amount of rent or mortgage and/or utility bills (gas, oil, or electricity) sometime in the previous 12 months.

[103] Housing quality hardship is defined as an affirmative response to one or more questions related to problems with a respondent's physical dwelling: Pests and/or insects; leaking roof or ceiling; windows that are broken or cannot shut; exposed electrical wires; broken plumbing (toilet, hot water, other); holes in walls, ceiling, or floor; no appliances (refrigerator or stove); and no phone (of any kind).

[104] *Id.*

[105] Elise Gould and Melat Kassa. Low-wage, low-hours workers were hit hardest in the COVID–19 recession: The State of Working America 2020 employment report, Economic Policy Institute (May 2021), available at *https://www.epi.org/publication/swa-2020-employment-report/.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] R. Chetty, J. Friedman, N. Hendren, M. Stepner, & Team, T. O. I., The Economic Impacts of COVID–19: Evidence from a New Public Database Built Using Private Sector Data (No. w27431; p. w27431) (2020), National Bureau of Economic Research. *https://doi.org/10.3386/w27431.*

[110] M. Despard, Michal Grinstein-Weiss, Yung Chun, and Stephen Roll, COVID–19 job and income loss leading to more hunger and financial hardship, Brookings Institute (July 13, 2020), *https://www.brookings.edu/blog/upfront/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/.*

[111] N. Panchal, R. Kamal, C. Muñana, & P. Chidambaram, The Implications of COVID–19 for Mental Health and Substance Use, Kaiser Family Foundation (February 10, 2021), *https://*

Summary of Interim Final Rule and Final Rule Structure

Summary: The interim final rule provided a non-exhaustive list of enumerated eligible uses to respond to the negative economic impacts of the pandemic through assistance to households, as well as a standard for assessing whether uses of funds beyond those enumerated are eligible.

The interim final rule described enumerated eligible uses for assistance to households in several categories: (1) Assistance to unemployed workers, (2) state Unemployment Insurance Trust Funds, (3) assistance to households, and (4) expenses to improve the efficacy of economic relief. Note that the interim final rule posed several questions to the public on enumerated eligible uses for assistance to households; comments on these questions are addressed in the relevant subject matter section below.

In addition, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities, the interim final rule also provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, specifically: (1) Building stronger communities through investments in housing and neighborhoods, (2) addressing educational disparities, and (3) promoting healthy childhood environments. In the interim final rule, under the Public Health section, recipients could also provide services to address health disparities and increase access to health and social services; these eligible uses have been re-organized into the Assistance to Households section to consolidate responses in disproportionately impacted communities and enhance clarity.

This section addresses enumerated eligible uses in the final rule to respond to negative economic impacts to households. As a reminder, recipients may presume that a household or population that experienced unemployment, experienced increased food or housing insecurity, or is low or moderate income experienced negative economic impacts resulting from the pandemic, and recipients may provide services to them that respond to these impacts, including these enumerated eligible uses.

For guidance on how to determine whether a particular use, beyond those enumerated, is eligible; further detail on which households and communities are presumed eligible for services; and how to identify eligible households and communities beyond those presumed eligible, see section General Provisions: Structure and Standards.

Reorganizations and Cross-References: The final rule reorganizes all enumerated eligible uses for impacted and disproportionately impacted households into the section Assistance to Households, with the exception that expenses to improve the efficacy of economic relief has been re-categorized into a different section of the final rule for increased clarity; for discussion of that use category, see section General Provisions: Other.

Note that in conducting this reorganization, and based on further analysis and in response to comments, Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from ''disproportionately impacted'' to ''impacted'' households accordingly, making these services available to both disproportionately impacted and impacted households. These uses include assistance applying for public benefits or services; programs or services that address or mitigate the impacts of the COVID–19 public health emergency on childhood health or welfare, including childcare, early learning services, programs to provide home visits, and services for families involved in the child welfare system and foster youth; programs to address the impacts of lost instructional time for students;[112] and programs or services that address housing insecurity, lack of affordable housing, or homelessness.

The following activities remain enumerated eligible uses for disproportionately impacted households: Remediation of lead paint or other lead hazards; housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity; and programs or services that address educational disparities, including assistance to high-poverty school districts to advance equitable funding across districts and geographies and evidence-based services to address the academic, social, emotional, and mental health needs of students.

Enumerated Eligible Uses for Impacted Households

The interim final rule included several enumerated eligible uses to provide assistance to households or populations facing negative economic impacts due to COVID–19. Enumerated eligible uses included: Food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; cash assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. It also posed a question as to what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19.

This section addresses each of these enumerated eligible uses in turn, with the exception of job training, which has been re-categorized for increased clarity to the eligible use for ''assistance to unemployed and underemployed workers.'' In general, commenters supported inclusion of these enumerated eligible uses to address key economic needs among households due to the pandemic, and Treasury is maintaining these eligible uses in the final rule, in line with commenters' recommendations.

1. Food assistance. The interim final rule included an enumerated eligible use for food assistance. Some commenters expressed support for this eligible use and emphasized the importance of aid to address food insecurity. Some commenters raised questions as to whether food assistance funds could be used to augment services provided through organizations like food banks, churches, and other food delivery services, or generally be sub-awarded to these organizations.

Treasury Response: Treasury is maintaining this enumerated eligible use without change. Recipients may, as was the case under the interim final rule, administer programs through a wide range of entities, including nonprofit and for-profit entities, to carry out eligible uses on behalf of the recipient government (see section Distinguishing Subrecipients versus Beneficiaries). Further, Treasury is clarifying that capital expenditures related to food banks and other facilities primarily dedicated to addressing food insecurity are eligible; recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General

www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/.

[112] For which recipients may presume that any student who did not have access to in-person instruction for a significant period of time was impacted by the pandemic.

Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

2. Emergency housing assistance. The interim final rule included an enumerated eligible use for rent, mortgage, or utility assistance and counseling and legal aid to prevent eviction or homelessness.

Public Comment: Several commenters supported the inclusion of eviction prevention activities as an eligible use given the high number of households behind on rent and potentially at risk of eviction. Following release of the interim final rule, Treasury had also received requests for elaboration on the types of eligible services in this category. Some commenters also recommended including assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, as an enumerated eligible use.

Treasury Response: In response to requests for elaboration on the types of eligible services for eviction prevention, Treasury has provided further guidance that these services include ''housing stability services that enable eligible households to maintain or obtain housing, such as housing counseling, fair housing counseling, case management related to housing stability, outreach to households at risk of eviction or promotion of housing support programs, housing related services for survivors of domestic abuse or human trafficking, and specialized services for individuals with disabilities or seniors that support their ability to access or maintain housing,'' as well as ''legal aid such as legal services or attorney's fees related to eviction proceedings and maintaining housing stability, court-based eviction prevention or eviction diversion programs, and other legal services that help households maintain or obtain housing.'' [113] Treasury also emphasized that recipients may work with court systems, nonprofits, and a wide range of other organizations to implement strategies to support housing stability and prevent evictions.

In the final rule, Treasury is maintaining these enumerated eligible uses, including those described in the interim final rule and later guidance, in line with commenters' recommendations. To enhance clarity, Treasury is also elaborating on some types of services included under this eligible use category; this remains a non-exhaustive list of eligible services. For example, eligible services under this use category include: Rent, rental arrears, utility costs or arrears (*e.g.,* electricity, gas, water and sewer, trash removal, and energy costs, such as fuel oil), reasonable accrued late fees (if not included in rental or utility arrears), mortgage payment assistance, financial assistance to allow a homeowner to reinstate a mortgage or to pay other housing-related costs related to a period of forbearance, delinquency, or default, mortgage principal reduction, facilitating mortgage interest rate reductions, counseling to prevent foreclosure or displacement, relocation expenses following eviction or foreclosure (*e.g.,* rental security deposits, application or screening fees). Treasury is clarifying that assistance to households for delinquent property taxes, for example to prevent tax foreclosures on homes, was permissible under the interim final rule and continues to be so under the final rule. In addition, Treasury is also clarifying that recipients may administer utility assistance or address arrears on behalf of households through direct or bulk payments to utility providers to facilitate utility assistance to multiple consumers at once, so long as the payments offset customer balances and therefore provide assistance to households.

This eligible use category also includes emergency assistance for individuals experiencing homelessness, either individual-level assistance (*e.g.,* rapid rehousing services) or assistance for groups of individuals (*e.g.,* master leases of hotels, motels, or similar facilities to expand available shelter).

Further, Treasury is clarifying that transitional shelters (*e.g.,* temporary residences for people experiencing homelessness) are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Note that this enumerated eligible use describes ''emergency housing assistance,'' or assistance for responses to the immediate or near-term negative economic impacts of the pandemic. The final rule also clarifies and expands the ability of recipients to use SLFRF funds to address the general lack of affordable housing and housing challenges underscored by the pandemic. For discussion of affordable housing eligible uses, including services that primarily increase access to affordable, high-quality housing and support stable housing and homeownership over the long term, see the eligible use for ''promoting long-term housing security: Affordable housing and homelessness.''

3. Emergency assistance for pressing needs: Burials, home repairs, weatherization, or other needs. The interim final rule included an enumerated eligible use for emergency assistance for burials, home repairs, weatherization, and other needs; these types of programs may provide emergency assistance for pressing and unavoidable household needs. Treasury did not receive comments on this eligible use and is maintaining it in the final rule.

Background on Home Repairs and Weatherization: The economic downturn has meant fewer households had the resources needed to make necessary home repairs and improvements. In May 2021, 28 percent of landlords reported deferring maintenance and 27 percent of tenants reported maintenance requests going unanswered.[114] While small and cosmetic repairs can often wait, deferring major repairs, such as plumbing needs, can result in unsafe and unhealthy living environments and, eventually, the need for more expensive repairs and fixes.

In addition to repairs, many homes are in need of weatherization. Weatherization assistance helps low- and moderate-income Americans save energy, reduce their utility bills, and keeps them and their homes safe. One in three households is energy insecure,[115] meaning they do not have the ability to meet their energy needs.[116] Weatherization efforts are particularly important for low- and moderate-income households. Households of color, renters, and households with low or moderate incomes are all more likely to report energy insecurity.[117] These

[113] *See FAQ 2.21.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[114] Jung Hyun Choi, Laurie Goodman, and Daniel Pang, The Pandemic Is Making It Difficult for Mom-and-Pop Landlords to Maintain Their Properties, Urban Institute (July 23, 2021), *https://www.urban.org/urban-wire/pandemic-making-it-difficult-mom-and-pop-landlords-maintain-their-properties.*

[115] U.S. Energy Information Administration, Residential Energy Consumption Survey (2017), Retrieved from *https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php.*

D. Hernández, Understanding 'energy insecurity' and why it matters to health, Social Science & Medicine, 167, 1–10 (2016), *https://doi.org/10.1016/j.socscimed.2016.08.029.*

[116] Hernández, D. (2016). Understanding 'energy insecurity' and why it matters to health. Social Science & Medicine, 167, 1–10. *https://doi.org/10.1016/j.socscimed.2016.08.029.*

[117] U.S. Energy Information Administration, Residential Energy Consumption Survey (RECS) *https://www.eia.gov/consumption/residential/data/2015/hc/php/hc11.1.php.* (last visited November 9, 2021)

disparities are partially a result of economic hardship but are also caused by inequitable access to housing with proper insulation, up to date heating, cooling, and ventilation systems, and functioning and up to date lighting and appliances.[118] While programs that address the effects of energy hardships, like the Low-Income Home Energy Assistance Program (LIHEAP), are critical, weatherization attempts to address root causes by addressing issues that lead to energy insecurities.

4. Internet access or digital literacy assistance. The interim final rule included an enumerated eligible use for assistance to households for internet access or digital literacy assistance. This enumerated eligible use, which responds to the negative economic impacts of the pandemic on a household by providing assistance that helps them secure internet access or increase their ability to use computers and the internet, is separate from the eligible use category for investments in broadband infrastructure, under Sections 602(c)(1)(D) and 603(c)(1)(D), which is used to build new broadband networks through infrastructure construction or modernization. For discussion of broadband infrastructure investment in the final rule, see section Broadband Infrastructure in Infrastructure.

Background: The COVID–19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among other critical activities, school, healthcare, and work. Recognizing the need for such connectivity, SLFRF funds can be used to make necessary investments in broadband infrastructure that increase access over the long term, as well as the necessary supports to purchase internet access or gain digital literacy skills needed to complete activities of daily living during the pandemic.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA internet Use Survey data, noting that Americans turn to broadband internet service for every facet of daily life including work, study, and healthcare.[119] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

However, even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[120] According to a 2021 Pew Research Center study, 20 percent of non-broadband users say that the monthly cost of home broadband is the primary reason they do not have broadband at home, and 40 percent say that cost is one reason for their lack of home broadband.[121] Further, according to another survey, 22 percent of parents with homebound schoolchildren during the COVID–19 pandemic say that it is very or somewhat likely that their children will have to rely on public wi-fi to finish their schoolwork because there is no reliable internet connection at home; this percentage nearly doubles for lower-income parents, 40 percent of whom noted that their children will have to rely on public wi-fi.[122] The same survey showed that 36 percent of lower-income parents with homebound children say their child will not be able to complete their schoolwork because they do not have access to a computer at home.[123]

Public Comment: Many commenters highlighted the importance of broadband access during the pandemic, including for remote work and education, and argued that affordability presents a major barrier to broadband adoption by households; in other words, many households live in areas that have broadband infrastructure and service available but are unable to purchase service for their household due to the high cost. These commenters argued that broadband must be affordable to be accessible.

Commenters proposed several potential responses to affordability concerns. Some commenters recommended that building ''gap networks,'' or broadband networks built at low cost to provide affordable service in areas where it is lacking, be eligible as assistance to households to respond to the negative economic impacts of the pandemic, even if they do not meet the technical standards for eligibility under the eligible use category of broadband infrastructure investment, especially the required speed standards for new service. These commenters argued that the networks have shown promise as a timely means to expand access to affordable broadband internet during the pandemic, even if they may not provide service speeds needed for more intensive internet uses. Another commenter requested eligible uses include funding cellular towers to decrease costs. One commenter recommended that affordability should be addressed through other programs but not SLFRF given that affordability and availability may require nuanced solutions that would be complex to combine.

Treasury Response: The interpretive framework and enumerated eligible uses allow recipients flexibility to address identified pandemic impacts, including through solutions that take into account the particularized issues in their community. Given extensive commenter feedback on the importance of affordability to achieving broadband access, and the centrality of broadband to participating in work, education, healthcare, and other activities during the pandemic, affordability programs are an appropriate eligible use to respond to the negative economic impacts of the pandemic and Treasury is maintaining the enumerated eligible use for assistance to households for internet access and digital literacy programs in the final rule.

Building or constructing new broadband networks is an infrastructure investment and is governed by a separate clause in the statute. Treasury has addressed comments on ''gap networks'' that require infrastructure build-out in the section Broadband Infrastructure in Infrastructure.

[118] A. Drehobl, & L. Ross, Lifting the high energy burden in America's largest cities: How energy efficiency can improve low income and underserved communities, American Council for an Energy Efficient Economy (2016), *https://www.aceee.org/sites/default/files/publications/researchreports/u1602.pdf.*

[119] *See, e.g.,* Nation Telecommunications and Information Administration, More than Half of American Households Used the Internet for Health-Related Activities in 2019, NTIA Data Show (December 7, 2020), *https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show;* Nation Telecommunications and Information Administration, Nearly a Third of American Employees Worked Remotely in 2019, NTIA Data Show (September 3, 2020) *https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show;* and generally, Nation Telecommunications and Information Administration, Digital Nation Data Explorer (June 10, 2020), *https://www.ntia.gov/data/digital-nation-data-explorer.*

[120] BroadbandSearch Blog Post, How Do U.S. Internet Costs Compare To The Rest Of The World?, *available at https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.*

[121] Pew Research Center, Mobile Technology and Home Broadband 2021 (June 3, 2021), *https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.*

[122] Pew Research Center, 53% of Americans Say the internet Has Been Essential During the COVID–19 Outbreak (April 30, 2020), *https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.*

[123] *Id.*

Public Comment: Some commenters also use the term ''gap networks'' to refer to equipment installed as part of wi-fi systems, such as routers, repeaters, and access points; this equipment provides consumer access to an existing broadband network and does not require new network build-out or construction. These commenters recommended that Treasury permit, as assistance to households for internet access, investments in public wi-fi networks, free wi-fi in public housing communities, and other equipment that offers internet access to end users by utilizing existing broadband networks.

Other commenters recommended that eligible uses in this category include providing devices and equipment necessary to access the internet, like computers and routers, directly to low-income households.

Treasury Response: Treasury has determined that these services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule. Treasury is clarifying that eligible uses under this category can also include a wide range of programs and services to expand internet access and digital literacy, such as subsidies for the cost of internet service, other programs that support adoption of internet service where available, digital literacy programs, or programs that provide devices and equipment to access the internet (*e.g.,* programs that provide equipment like tablets, computers, or routers) to households. Recipients seeking to use funds for equipment should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures (*e.g.,* equipment, property, and facilities).

5. Cash assistance. The interim final rule included as an enumerated eligible use cash assistance and provided that cash transfers must be ''reasonably proportional'' to the negative economic impact they address and may not be ''grossly in excess of the amount needed to address'' the impact. In assessing whether a transfer is reasonably proportional, recipients may ''consider and take guidance from the per person amounts previously provided by the Federal Government in response to the COVID–19 crisis,'' and transfers ''grossly in excess of such amounts'' are not eligible.

Public Comment: Several commenters expressed support for this eligible use, noting that this is a common policy tool for some governments to support the well-being of households and individuals in their communities. Some commenters requested that Treasury set a specific dollar amount for permissible cash transfers, and Treasury has also received recipient questions on whether specific types of transfers, such as those to a substantial share of the population in the jurisdiction, would be a permissible use of funds.

Treasury Response: Treasury is maintaining this enumerated eligible use in the final rule, in line with commenters' recommendations. Because the final rule is intended to provide flexibility to recipients to respond to the particularized pandemic impacts in their communities, which may vary in type and intensity, setting a specific dollar threshold for eligible cash transfers would fail to recognize the particularized needs of communities and limit recipients' flexibility to tailor their response to those needs.

To provide greater clarity, Treasury is elaborating on the analysis that recipients may undertake to assess the eligibility of specific cash assistance programs or transfers. Cash transfers, like all eligible uses in this category, must respond to the negative economic impacts of the pandemic on a household or class of households. For the reasons discussed above, recipients may presume that low- and moderate-income households (as defined in the final rule), as well as households that experienced unemployment, food insecurity, or housing insecurity, experienced a negative economic impact due to the pandemic.

Recipients may also identify other households or classes of households that experienced a negative economic impact of the pandemic and provide cash assistance that is reasonably proportional to, and not grossly in excess of, the amount needed to address the negative economic impact. For example, in the ARPA, Congress authorized Economic Impact Payments to households at certain income levels, identifying and responding to a negative economic impact of the pandemic on these households.

Finally, Treasury has reiterated in the final rule that responses to negative economic impacts should be reasonably proportional to the impact that they are intended to address. Uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Reasonably proportional refers to the scale of the response compared to the scale of the harm. It also refers to the targeting of the response to beneficiaries compared to the amount of harm they experienced; for example, it may not be reasonably proportional for a cash assistance program to provide assistance in a very small amount to a group that experienced severe harm and in a much larger amount to a group that experienced relatively little harm.

6. Survivor's benefits. The interim final rule included an enumerated eligible use for survivor's benefits to surviving family members of individuals who have died from COVID–19, including cash assistance to widows, widowers, or dependents.

Public Comment: Treasury did not receive any comments on the inclusion of survivor's benefits as an enumerated use for impacted households in the interim final rule.

Treasury Response: This use of funds remains eligible under the final rule. Consistent with the general reorganization noted above, the final rule organizes survivor's benefits under assistance to households to clarify that households are the intended beneficiaries of survivor's benefits.

7. Assistance accessing or applying for public benefits or services. Recognizing that eligible households often face barriers to accessing public benefits or services that improve health and economic outcomes, the interim final rule included as an enumerated eligible use in disproportionately impacted communities, public benefits navigators to assist community members with navigating and applying for available federal, state, and local public benefits or services. Treasury also clarified in subsequent guidance after the interim final rule that this eligible use category would include outreach efforts to increase uptake of the Child Tax Credit.

Background: The under-enrollment of eligible households in social assistance programs is a well-recognized and persistent challenge. There are many reasons why a household may not be receiving a particular benefit even though they are eligible. For many federal programs, enrollment processes vary from state-to-state. Sometimes, households are simply unaware that they are eligible for a particular benefit.[124] For example, despite having one of the highest rates of participation of any benefits program, nearly 20 percent of eligible individuals do not participate in the Supplementary Nutritional Assistance Program

[124] Amy Finkelstein & Matthew J Notowidigdo, Take-Up and Targeting: Experimental Evidence from SNAP, The Quarterly Journal of Economics, vol 134(3), pages 1505–1556 (2019), *https://www.nber.org/papers/w24652.*

(SNAP).[125] In other cases, policies like public charge and asset testing can discourage otherwise eligible households.[126] While the gap between households that need assistance and the number of households participating in public benefit programs has always existed, narrowing that gap and ensuring households receive the support they need is critical in mitigating the negative economic impacts of the pandemic.

Public Comment: Treasury has also received feedback from recipients and stakeholders noting the need to increase awareness and uptake of assistance programs, including gaps that remain in enrollment of eligible households in programs to address the negative economic impacts of the pandemic.[127]

Treasury Response: Treasury has determined that this impact of the pandemic is widely experienced across many jurisdictions and programs or services to increase awareness and uptake of assistance programs would respond to the pandemic's negative economic impact in all communities. As such, in the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities.

8. Promoting healthy childhood environments. The interim final rule included programs and services that promote healthy childhood environments as an enumerated eligible use for disproportionately impacted households. The interim final rule listed three programs or services included under this use: Childcare; programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use. The interim final rule also included an enumerated eligible use for early learning services in disproportionately impacted communities, to address disparities in education.

Public Comment: Childcare and Early Learning: Treasury received multiple comments that were supportive of the provision of childcare. Treasury has also received multiple comments and questions indicating that recipients have identified a need for childcare for a broader range of households and communities, for example those that may need childcare in order to return to work, in addition to households and communities disproportionately impacted by the pandemic. Several commenters expressed uncertainty about how childcare facilities should interact with the boundaries of a QCT. Finally, one commenter recommended that pre-K or early learning services encompass care for infants and toddlers, arguing that these types of care are often more expensive or challenging to access for families.

Background: Childcare and Early Learning: As daycares and schools closed in-person activities during the pandemic, many working families were left without childcare during the day.[128] Although daycare centers and schools have since reopened in many communities, there remains a persistent childcare shortage as childcare employment levels have not fully rebounded since the sharp decline in childcare employment at the beginning of the pandemic.[129] As a result, working parents in communities across the country, and more specifically women, may face challenges entering or reentering the labor force.[130]

Low-income households are also more likely to lose access to quality childcare.[131] The widespread closure of childcare centers combined with a lack of access to paid family leave means parents in low-income households are more likely to experience a reduction of income or leave their jobs due to a lack of childcare options.[132]

Additionally, childcare providers serving primarily low-income families were less likely to remain open during the pandemic because of tighter profit margins and general community financial insecurity, compared to childcare providers serving primarily high-income families.[133] [134]

In addition to disruptions to childcare, early learning services were also significantly impacted by the pandemic, and the disruption of these services had widespread ramifications for learning loss, parental support, and equity. Early learning centers have seen declined enrollment across the board, though there was a larger dip in enrollment for low-income households.[135] This lower enrollment coincides with a diminishing workforce, as similarly to childcare, early childhood educators have been leaving the profession due to long hours, low pay,[136] and health and safety concerns.[137] As a result, children's school readiness has suffered, leading to potential long-term impacts on life outcomes.[138] The impact also extended

[125] United States Department of Agriculture, Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2016 to Fiscal Year 2018 (May 2021), *https://fns-prod.azureedge.net/sites/default/files/resource-files/Trends2016-2018.pdf.*

[126] Jeremy Barofsky et al., Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs, Health Affairs (October 2020), *https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00763.*

[127] *See, e.g.,* U.S. Department of the Treasury, By ZIP Code: Number of Children under Age 18 with a Social Security Number Who Are Not Found on a Tax Year 2019 or 2020 Tax Return but who Appear on a Tax Year 2019 Form 1095 and Associated Number of Policy Holders (June 2021), *https://home.treasury.gov/system/files/131/Estimated-Counts-of-Children-Unclaimed-for-CTC-by-ZIP-Code-2019.pdf.*

[128] Women have carried a larger share of childcare responsibilities than men during the COVID–19 crisis. See, *e.g.,* Gema Zamarro & Marı´a J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID–19, Rev. Econ. Household 19:11–40 (2021), available at *https://link.springer.com/article/10.1007/s11150-020-09534-7;* Titan Alon et al., The Impact of COVID–19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), available at *https://www.nber.org/papers/w26947.*

[129] *See, e.g.,* Center For The Study Of Child Care Employment (CSCCE), Child Care Sector Jobs: BLS Analysis (November 8, 2021), *https://cscce.berkeley.edu/child-care-sector-jobs-bls-analysis/;* Emma K. Lee, and Zachary Parolin. The Care Burden during COVID–19: A National Database of Child Care Closures in the United States, Socius (January 2021), doi:10.1177/23780231211032028.

[130] Jason Furman, Melissa Schettini Kearney, and Wilson Powell, The Role of Childcare Challenges in the US Jobs Market Recovery During the COVID–19 Pandemic, NBER Working Paper No. 28934 (June 2021), *https://www.nber.org/papers/w28934.*

[131] U.S. Census Bureau, Phase 3.2 Household Pulse Survey: Table 2. Childcare Arrangements in the Last 4 Weeks for Children Under 5 Years Old, by Selected Characteristics, (Washington: 2021), available at *https://www.census.gov/programs-surveys/household-pulse-survey/data.html.*

[132] *Id.*

[133] N. Kalluri, C. Kelly, & A. Garg, Child Care During the COVID–19 Pandemic: A Bad Situation Made Worse. Pediatrics (2021), *https://doi.org/10.1542/peds.2020-041525.*

[134] National Association for the Education of Young Children, Am I Next? Sacrificing to Stay Open, Child Care Providers Face a Bleak Future Without Relief (December 2020), *https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDF.*

[135] G. G. Weisenfeld, Impacts of Covid-19 on Preschool Enrollment and Spending, New Brunswick, NJ: National Institute for Early Education Research (2021), *https://nieer.org/wp-content/uploads/2021/03/NIEER_Policy_Brief_Impacts-of-Covid-19on_Preschool_Enrollment_and_Spending_3_16_21.pdf.*

[136] Heather Long, 'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy, Washington Post (September 19, 2021), *https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/.*

[137] Monash University, The emotional toll of COVID–19 among early childhood educators (August 5, 2020) *https://lens.monash.edu/@education/2020/08/05/1381001/the-emotional-toll-of-covid-19-among-early-childhood-educators.*

[138] Daphna Bassok and Anna Shapiro, Understanding COVID–19-era enrollment drops

Continued

to parents. Parents, especially mothers, may face challenges reentering or remaining in the workforce if early learning services are unavailable.

Treasury Response: Childcare and Early Learning Services: Treasury agrees with commenters' analysis that challenges accessing or affording childcare have been widespread during the pandemic, affecting many jurisdictions and populations across the country. Disruptions to early care and learning services similarly have had broad impact and likely result in negative impacts for young children and their parents. As such, these enumerated eligible uses are generally responsive to the negative economic impacts of the pandemic in all communities, not just in disproportionately impacted communities. Under the final rule, childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted. These eligible uses can include new or expanded services, increasing access to services, efforts to bolster, support, or preserve existing providers and services, and similar activities.

Further, Treasury is clarifying that improvements to or new construction of childcare, daycare, and early learning facilities are eligible capital expenditures. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Public Comment: Home Visiting: Treasury has also received questions about whether the provision of home visiting services would be responsive to the health and mental health needs of impacted new mothers, citing the positive mental health impacts shown on the mother as well as improved outcomes for children.

Background: Home Visiting: Pregnant and recently pregnant individuals are at an increased risk for serious illness from COVID–19.[139] Furthermore, pregnant individuals with COVID–19 are more likely to experience preterm birth (delivering the baby earlier than 37 weeks).[140] In addition to heightened health risks from COVID–19, pregnant individuals may have experienced significant changes to their prenatal care during the pandemic [141] or may also have experienced increased mental health challenges, including high levels of depression, anxiety, loneliness, and post-traumatic stress during the pandemic.[142]

Home visiting services provided to families, particularly new mothers and newborns, feature regular home visits from trained nurses, social workers, and/or counselors who provide health care, mental health resources, positive parenting support, support in making personal health decisions, and awareness of other potentially helpful services. These functions have become even more essential at mitigating negative factors associated with the pandemic. Home visits give professionals a chance to flag potential domestic violence, which has risen worldwide over the course of the pandemic.[143] Racial health disparities can also be driven down by home visits. For example, Black women are more likely to avoid hospitals during the pandemic, and home visitors can help either assuage concerns around hospitals or give effective advice for alternative methods of childbirth.[144] Given the disproportionate effect of the pandemic on people of color, home visits are an essential equity tool that tackle major negative effects of the pandemic. These are just a few selections from the evidence that suggests many home visiting models can have a positive effect on maternal physical and mental health.[145]

Treasury Response: Home Visiting: Given the widespread impact of COVID–19 on pregnant and recently pregnant individuals, Treasury is re-categorizing home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities. Under the final rule, these eligible uses are available to impacted households or classes of households.

Public Comment: Child Welfare: While the interim final rule noted that certain types of assistance, particularly around child development and parenting, were eligible for child welfare-involved families, Treasury has received some recipient questions asking whether financial, educational, housing, or other supports and services are eligible uses for foster youth, including those aging out of the system, and child welfare-involved families. Other commenters asked about whether funding for kinship care would be eligible.

Background: Child Welfare: The COVID–19 pandemic placed meaningful strain on the child welfare and foster care system. Court hearings were delayed,[146] essential mental health care was shifted to a virtual environment, and attendance and performance in school among foster children dropped sharply.[147] Additionally, there was a nationwide rise of new children entering the foster care system and many states placed temporary moratoria on children aging out of the foster care system.[148] As these temporary moratoria expire, additional support will be needed to assist children exiting the system.

Additionally, financial and material hardship are causal factors in the increase of new children entering the foster care system, whether through loss of a caregiver, domestic violence,[149] or other associated costs of the pandemic. Therefore, support to decrease these hardships will support families and increase positive outcomes for youth

among early-grade public school students, Brookings Institution (February 22, 2021), *https://www.brookings.edu/blog/brown-center-chalkboard/2021/02/22/understanding-covid-19-era-enrollment-drops-among-early-grade-public-school-students/.*

[139] Centers for Disease Control and Prevention, Pregnant and Recently Pregnant People, *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html* (last visited November 9, 2021).

[140] *Id.*

[141] Sarah Javaid, Sarah Barringer, Sarah D Compton, Elizabeth Kaselitz, Maria Muzik, Cheryl A. Moyer, The impact of COVID–19 on prenatal care in the United States: Qualitative analysis from a survey of 2519 pregnant women, Midwifery, Volume 98, 2021, 102991, ISSN 0266–6138, *https://doi.org/10.1016/j.midw.2021.102991.*

[142] A Basu, HH Kim, R Basaldua, KW Choi, L Charron, et al., A cross-national study of factors associated with women's perinatal mental health and wellbeing during the COVID–19 pandemic, PLOS ONE 16(4): e0249780, (2021), *https://doi.org/10.1371/journal.pone.0249780.*

[143] Amanda Taub, A New Covid-19 Crisis: Domestic Abuse Rises Worldwide, New York Times (April 6, 2020), *https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html.*

[144] Xenia Shih Bion, Efforts to Reduce Black Maternal Mortality Complicated by COVID–19, California Health Care Foundation (April 20, 2020), *https://www.chcf.org/blog/efforts-reduce-black-maternal-mortality-complicated-covid-19/.*

[145] U.S. Department of Health and Human Services, Home Visiting Evidence of Effectiveness, *https://homvee.acf.hhs.gov/outcomes/maternal%20health/In%20Brief.*

[146] National Conference of State Legislatures, Criminal Justice System Responses to COVID–19 (November 16, 2020), *https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-and-covid-19.aspx.*

[147] John Burton Advocates for Youth, The Cumulative Impact of the Pandemic on Youth Who Have Been in Foster Care or Homeless (May 2020) *https://jbay.org/wp-content/uploads/2021/04/JBAY-COVID-19-Impact.pdf.*

[148] John Kelly, Next Week, Thousands of Foster Youth Will Age Out on the Same Day (September 21, 2021), *https://imprintnews.org/subscriber-content/thousands-of-foster-youth-will-age-out-on-the-same-day/59006.*

[149] Conrad-Hiebner, Aislinn, and Elizabeth Byram, The Temporal Impact of Economic Insecurity on Child Maltreatment: A Systematic Review. Trauma, Violence, & Abuse, vol. 21, no. 1, Jan. 2020, pp. 157–178, doi:10.1177/1524838018756122.

and families that may otherwise become involved in the child welfare system.

Treasury Response: In the final rule, Treasury is clarifying that services to foster youth, including those aging out of the system, and child welfare-involved families may encompass a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care.

9. Addressing the impacts of lost instructional time.

Public Comment: The interim final rule included an enumerated eligible use to address educational disparities in disproportionately impacted communities, recognizing that underserved students have been more severely impacted by the pandemic and including responsive services for early learning, enhance funding to high-poverty districts, and providing evidence-based services to address the academic, social, emotional, and mental health needs of students. Some commenters expressed concerns that learning loss or the negative impacts of lost instructional time due to school closures or remote education during the pandemic had affected a significant share of students in grades kindergarten through twelve (K–12), including students who may not fall within a disproportionally impacted group.

Background: The COVID–19 pandemic resulted in the widespread closure of schools across the nation. While many schools and districts reopened to in-person instruction or implemented remote learning, the shift was not immediate or without consequence. Children who received virtual only or combined remote and in-person instruction were more likely to report experiencing negative mental- and physical health outcomes than children who received in-person instruction.[150]

Treasury Response: Under the final rule, addressing the impact of lost instructional time and/or learning loss is an enumerated eligible use for impacted households. When providing services to address lost instructional time, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services.

Interventions or services that address the impact of lost instructional time may include offering high-quality tutoring and other extended learning opportunities, providing differentiated instruction, implementing activities to meet the comprehensive needs of students, expanding and improving language access for parents and families, providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment, improving student engagement in distance education, and administering and using high-quality assessments to assess students' academic progress, among others. In designing services under this eligible use, recipients may wish to reference guidance from the Department of Education on strategies for addressing lost instructional time.[151]

The final rule also maintains a separate enumerated eligible use for addressing educational disparities in disproportionately impacted communities. This eligible use includes services to address disparities in educational outcomes that predate the pandemic and amplified its impact on underserved students; these include, for example, enhanced funding to high-poverty districts and providing evidence-based services to address the academic, social, emotional, and mental health needs of students.

Finally, as described in the section Public Health, recipients can provide a broad range of behavioral health services, including services for children and youth in schools, to respond to the impacts of the pandemic on mental health and other behavioral health issues. When providing behavioral health services, recipients may presume that the general public was impacted by the pandemic and provide behavioral health services to members of the general public, including children and youth in schools, without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive.

10. Promoting long-term housing security: affordable housing and homelessness. Under the interim final rule, recipients may use SLFRF funds to provide a set of housing services to communities that have been disproportionately impacted by the pandemic. Specifically, the interim final rule provided that programs or services that address housing insecurity, lack of affordable housing, or homelessness, were responsive to the negative economic impacts of the pandemic when provided to disproportionately impacted households and communities. The enumerated uses included supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless and development of affordable housing to increase supply of affordable and high-quality living units. Many recipients have already announced plans to use SLFRF funds for affordable housing interventions in all of these categories. Treasury received many comments asking for additional clarity or flexibility in these uses.

As detailed below, based on multiple public comments and questions and Treasury's subsequent analysis, Treasury has determined that supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations. This final rule reflects this clarification and builds on the objectives stated in the interim final rule to improve access to stable, affordable housing, including through interventions that increase the supply of affordable and high-quality living units, improve housing security, and support durable and sustainable homeownership.

Finally, note that ''emergency housing assistance,'' or assistance for responses to the immediate negative economic impacts of the pandemic through services like financial assistance for rental arrears or mortgage payments, is also an eligible use category for assistance to households under the final rule; see the eligible use for ''emergency housing assistance'' above. The provision of housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity remains an eligible use under assistance to disproportionately impacted households; for discussion, see the eligible use for ''housing vouchers and assistance relocating'' below.

Background: Affordable Housing: It is clear that the ongoing pandemic and resulting economic crisis are having a profound, long-term negative effect on the pre-existing affordable housing crisis facing low-income households.[152]

[150] Verlenden JV, Pampati S, Rasberry CN, et al. Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID–19 Pandemic—COVID Experiences Survey, United States, October 8–November 13, 2020. MMWR Morb Mortal Wkly Rep 2021;70:369–376. DOI: *http://dx.doi.org/10.15585/mmwr.mm7011a1external* icon.

[151] U.S. Department of Education, Strategies for Using American Rescue Plan Funding to Address the Impact of Lost Instructional Time, August 2021. Retrieved from *https://www2.ed.gov/documents/coronavirus/lost-instructional-time.pdf.*

[152] Consumer Financial Protection Bureau, Housing insecurity and the COVID–19 pandemic

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The combination of a large number of higher-income households who have weathered the pandemic without significant income losses, low interest rates, and housing supply constraints exacerbated by the pandemic, have driven a sharp increase in the sale price of homes.[153] Meanwhile, many low-income renters and homeowners are struggling with lost employment and income and are behind on their housing payments.[154]

Public Comment: Affordable Housing Outside of Low-Income Geographies: A major theme in comments was that affordable housing interventions, especially development of affordable housing, should be allowed outside of QCTs, as concentrating the supply of affordable housing in low-income geographies can have the effect of increasing both concentrated poverty and racial and economic segregation, while locking lower-income households in need of housing support out of high-opportunity neighborhoods with access to employment and amenities.

Treasury Response: Affordable Housing Outside Low-Income Geographies: As previously stated, affordable housing is not confined to low-income geographies under the interim final rule. As discussed elsewhere, the interim final rule presumed that QCTs, as well as communities served by Tribal governments, were disproportionately impacted for administrative convenience, but recipients may identify other populations, households, or geographic areas with disparate impacts of COVID–19 and provide affordable housing services to them. For example, under the interim final rule, a city could determine that its low-income residents faced disproportionate impacts of COVID–19 and develop affordable housing targeted to these households. Such a scenario could include, for example, affordable projects in higher-income neighborhoods that would allow residents to live closer to jobs and well-resourced schools.

Additionally, as noted above, Treasury is finalizing the rule with some changes to the treatment of affordable housing development designed to clarify that permanent supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase supply of affordable and high-quality living units, are responsive to individuals and households that were impacted by the pandemic in addition to those that were disproportionately impacted. This shift is in line with commenters' recommendations and consistent with the facts described above, which demonstrate that lack of supply of affordable housing units contributed to the pandemic's impact on housing insecurity and unsustainable housing cost burdens and that these impacts were experienced broadly across the country.

Public Comment: Eligible Activities: Many commenters asked for clarity on what types of activities (*e.g.,* land acquisition, construction, pre-construction costs, operating costs, etc.) are eligible uses of SLFRF, and what affordability criteria must be applied to affordable housing development. Commenters encouraged Treasury to allow the full array of affordable housing activities, including particular requests for broad flexibility for Tribal communities, and to specify that ''development'' should include construction, preservation, rehabilitation, and operation. Other commenters requested clarification about permissible program administration approaches for affordable housing, such as contracting methods and distribution of funds.

Some commenters asked that Treasury require SLFRF funds to be focused on the lowest-income households, who suffer the most severe rent burdens and risks of housing instability, and whose housing situation has left them particularly vulnerable to COVID–19. For example, one commenter argued that SLFRF funds should only be used to support affordable housing for households making 50 percent of AMI or less and that recipients should be required to set aside significant portions of any developments for renters making 30 percent of AMI or less and persons with physical and sensory disabilities. Other commenters requested a more flexible approach to affordable housing definitions.

Treasury Response: Eligible Activities: The final rule clarifies eligibility of affordable housing development for recipients; these uses were eligible under the interim final rule, but Treasury is providing further guidance to enhance clarity and respond to recipient and commenter questions.

As with all interventions to address the negative economic impacts of the pandemic, affordable housing projects must be responsive and proportional to the harm identified. This test may be met by affordable housing development projects—which may involve large expenditures and capital investments—if the developments increase the supply of long-term affordable housing for low-income households. While there may be less costly (or non-capital) alternatives to affordable housing development, a comprehensive response to the widespread housing challenges underscored by the pandemic will require the production of additional affordable homes, and targeted affordable housing development is a cost-effective and proportional response to this need.

For purposes of this test, Treasury will presume that any projects that would be eligible for funding under either the National Housing Trust Fund (HTF) or the Home Investment Partnerships Program (HOME) are eligible uses of SLFRF funds. Note that these programs use different income limits than the definition of low- and moderate-income adopted by Treasury. Given the severity of the affordable housing shortage, and the ways in which the pandemic has exacerbated the need for affordable, high-quality dwelling units, Treasury has determined that the households served by these federal housing programs have been impacted by the pandemic and its negative economic impacts and that development of affordable housing consistent with these programs is a related and reasonably proportional response to those impacts. Additionally, affordable housing projects provided by a Tribal government are eligible uses of SLFRF if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program. Alignment with these programs, which define ''affordable housing'' in a manner consistent with a proportionate response to the affordable housing challenges faced by low- and moderate-income households as a result of the negative economic impacts of the pandemic, is intended to give recipients comfort and clarity as they design a

(March 2020), *https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.*

[153] Joint Center For Housing Studies Of Harvard University, The State of the Nation's Housing (June 2021), *https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf.*

[154] Davin Reed and Eileen Divringi, Household Rental Debt During COVID–19: Update for 2021, Federal Reserve Bank of Philadelphia (2020), available at: *https://www.philadelphiafed.org/community-development/housing-and-neighborhoods/household-rental-debt-during-covid-19-update-for-2021.* Further, some research suggests that liquidity may be a more important predictor of default than other factors, including income or equity. *See* Trading Equity for Liquidity (June 2019), available at *https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf.*

wide variety of affordable housing interventions, including production, rehabilitation, and preservation of affordable rental housing and, in some cases, affordable homeownership units. These programs allow the financing of a wide range of affordable housing activities and set clear eligibility criteria that many recipients are already familiar with.

Finally, to further support sustainable and durable homeownership, recipients may consider offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing, mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (*e.g.,* if the borrower faces financial stress). Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds.

Public Comment: Permanent Supportive Housing: Treasury has received comments encouraging the use of SLFRF funds for permanent supportive housing. This is an eligible use under the interim final rule: Both the development of affordable housing (including operating subsidies) and wraparound services such as behavioral health services, employment services, and other supportive services, are eligible responses to the public health crisis or its negative economic impacts.

Treasury Response: The final rule maintains the eligibility of permanent supportive housing as an enumerated use. Treasury is also clarifying that other affordable housing developments targeted to specialized populations are also eligible, for example recovery housing for individuals in recovery from substance use.

Public Comment: Operating Expenses: Commenters specifically asked that Treasury allow the use of SLFRF funds for operating expenses of affordable housing units, as operating subsidies are typically required to reach extremely low-income households, whose affordable rents may be lower than the ongoing cost of operating their unit.

Treasury Response: Operating expenses for eligible affordable housing were an eligible use of funds under the interim final rule and the final rule maintains this treatment. This may include capitalized operating reserves.

Rehabilitation and repair of public housing will also be considered an eligible use of SLFRF funds.

Public Comment: Affordable Housing Loans and Revolving Loan Funds: Some commenters requested that loans with maturities beyond the period of performance or revolving loan funds that revolve beyond the period of performance be eligible uses of SLFRF funds if used for affordable housing. Some commenters pointed out that for-profit developers of low-income housing through the Low-Income Housing Tax Credit (LIHTC) may be deterred from accepting grants to bridge funding gaps in current LIHTC deals by the treatment of grants to for-profit entities in the calculation of eligible basis for the LIHTC.

Treasury Response: The final rule does not change the treatment of loans from the interim final rule. For more details see section Treatment of Loans in Program Administration Provisions. Similarly, the final rule does not change the treatment of grants to support affordable housing development, including developments supported by the LIHTC: such grants are an eligible use of funds.

Additional enumerated eligible uses for assistance to impacted households. As noted above, the interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the negative economic impacts of COVID–19. In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist households, ranging from general categories of services (*e.g.,* legal and social services) to services that respond to needs widely experienced across the country (*e.g.,* access to and affordability of health insurance) to services that are most applicable to the particularized needs of certain populations or geographic areas of the United States (*e.g.,* senior citizens, SNAP recipients, immigrants, formerly-incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in the final rule aims to clarify additional enumerated eligible uses that respond to negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. In the final rule, Treasury is clarifying several additional uses, which generally respond to pandemic impacts experienced broadly across jurisdictions and populations, are eligible under the interim final rule as assistance to households and continue to be so under the final rule, as outlined below.

11. Paid sick, medical, or family leave.

Public Comment: Some commenters argued that the pandemic increased the need for paid sick or medical leave, as staying home when ill is recommended by the CDC to prevent spread of the virus but lack of access to paid sick leave often prevents workers from staying home. Other commenters recommended paid family leave as an eligible use, arguing that shortages in access to childcare or home health assistance, as well as school closures, may increase the need for family members to serve as caretakers.

Background: The COVID–19 pandemic highlighted the importance of paid leave as well as the number of workers who do not have access to paid sick and/or family leave. When workers have access to paid leave, they are less likely to report to work sick, and therefore less likely to spread illnesses in the workplace: One study demonstrates that the emergency sick leave provision of the Families First Coronavirus Response Act (FFCRA) reduced the spread of COVID–19.[155]

The lack of paid leave exacerbates financial hardships experienced as a result of the public health emergency. A 2018 survey by the Department of Labor found that two-thirds of employees that took unpaid or partial-paid leave experienced financial hardship.[156] Furthermore, because the Family and Medical Leave Act (FMLA) excludes small employers, part-time workers, and workers who have been with their employer for less than a year, 44 percent of workers do not have access to even unpaid leave.[157] Workers of color and workers with lower incomes are less likely to have access to paid leave.[158] [159]

[155] Stefan Pichler, Katherine Wen, and Nicolas R. Ziebarth, COVID–19 Emergency Sick Leave Has Helped Flatten The Curve In The United States: Study examines the impact of emergency sick leave on the spread of COVID–19, Health Affairs 39, no. 12 (2020): 2197–2204, *https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863.*

[156] Scott Brown et al., Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys, Abt Associates (July 2020), *https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018SurveyResults_FinalReport_Aug2020.pdf.*

[157] *Id.*

[158] Ann P. Bartel et al., Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets, U.S. Bureau of Labor Statistics (BLS) (January 2019), *https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-andmedical-leave.htm.*

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For workers that are also caregivers for children, seniors, or other family members, there may be a similar need for—and benefits of—paid family leave. For example, some workers may have struggled during the pandemic to balance caring for children, as schools and daycares closed, and working. For new parents, paid parental leave results in fewer infant hospitalizations, lowering parental stress, increasing parental involvement, and improving the overall health of parent and child.[160] COVID–19 has also increased the levels of ''caregiving intensity'' [161] and ''caregiving burden'' [162] for those providing care to seniors or older family members.[163] [164] When surveyed, more than half of caregivers reported that COVID–19 increased both the amount of caregiving responsibilities they had as well as the negative physical and mental impacts their caregiving responsibilities had on themselves.[165]

Treasury Response: Treasury agrees that these constitute impacts of the pandemic, and accordingly, under the final rule, creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds to respond to the negative economic impacts of the pandemic.

12. Health insurance.

Public Comment: Several commenters recommended that uses of funds to expand access to health insurance be enumerated eligible uses; commenters believed that the heightened risk of illness or hospitalization due to COVID–19 had increased the negative economic impacts of lacking health insurance.

Background: In 2019, prior to the pandemic, it was estimated that 11 percent of nonelderly adults lacked health insurance.[166] By mid-2020, job loss had resulted in an estimated 3.3 million people losing their employer sponsored insurance, resulting in an additional 2 million uninsured adults.[167] Participation in Medicaid, the Children's Health Insurance Program (CHIP), and the Affordable Care Act (ACA) marketplace played an important role in minimizing the number of people who completely lost health insurance during the early phases of the pandemic; Medicaid and CHIP enrollment increased by 9 percent from February to September 2020 [168] and 8.3 million people enrolled in insurance through the ACA marketplace.[169]

Although the ACA, CHIP, and Medicaid have significantly reduced the number of uninsured Americans through the pandemic and the economic downturn, adequate coverage and affordability still remains an issue for many. In 2020, 21 percent of working-age adults were inadequately insured, meaning even if they had insurance, they incurred a significant amount of out-of-pocket costs.[170] Additionally, 37 percent of adults reported struggling with medical bills or medical debt and 71 percent of adults who did not purchase insurance cited affordability as the main factor.[171]

Treasury Response: Treasury agrees that loss of health insurance, increased financial risk from lacking health insurance, or excessive out-of-pocket healthcare costs constitute negative economic impacts of the pandemic. Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households, for example, subsidies for health insurance premiums or expansion of a recipient's health insurance plan to cover additional employees who currently lack coverage.

13. Services for the unbanked and underbanked.

Public Comment: One commenter expressed support for the inclusion of services to increase banking access as an allowable expense under SLFRF. The commenter recommended that states be encouraged to offer opportunities for consumers to open safe and affordable accounts capable of receiving direct payments. The commenter emphasized that allowing unbanked and underbanked households to receive funds securely through no-fee, direct deposit will help connect or reconnect consumers to the mainstream financial system.

Background: Banking inequities can make it difficult for unbanked or underbanked households to access housing, jobs, and other important economic opportunities. Being unbanked or underbanked can also make it challenging for households to apply for and receive financial assistance, including services like pandemic emergency housing assistance.

Safe, affordable, and accessible financial services play a critical role in assisting households in the United States in managing income volatility and cash flow shortages.[172] Currently, over 5 percent of families, or 7 million households are ''unbanked,'' meaning they do not have a bank account.[173] Low-income households, non-white households, and households with individuals with disabilities were even more likely to be unbanked. In 2019, 16 percent of Native American households, 14 percent of Black households, and 12 percent of Hispanic households were unbanked, compared to 2.5 percent of white households. Additionally,

[159] U.S. Bureau of Labor Statistics, Employee Benefits in the United States (March 2019), *https://www.bls.gov/ncs/ebs/benefits/2019/ownership/civilian/table31a.pdf.*

[160] Maya Rossin-Slater et al., Local exposure to school shootings and youth antidepressant use, Proceedings of the National Academy of Sciences, vol 117(38), pages 23484–23489 (2020), *https://www.pnas.org/content/117/38/23484;* Ariel Marek Pihl and Gaetano Basso, Did California Paid Family Leave Impact Infant Health?, Journal of Policy Analysis and Management, *https://onlinelibrary.wiley.com/doi/abs/10.1002/pam.2210.*

[161] J.C. Jacobs, A. Laporte, C.H. Van Houtven, P.C. Coyte, Caregiving intensity and retirement status in Canada. Social Science & Medicine, 102, 74–82 (2014), *https://www.sciencedirect.com/science/article/abs/pii/S0277953613006631.*

[162] E. Lightfoot, R.P. Moone, Caregiving in times of uncertainty: Helping adult children of aging parents find support during the COVID–19 outbreak, Journal of Gerontological Social Work, 63(6–7), 542–552 (2020), *https://www.tandfonline.com/doi/abs/10.1080/01634372.2020.1769793.*

[163] Note: ''Caregiving intensity'' is defined as the amount and type of care provided by informal caregivers; ''Caregiving burden'' is defined as the impacts on physical and mental health, and health-related quality of life of informal caregivers.

[164] SA Cohen, ZJ Kunicki, MM Drohan, ML Greaney, Exploring Changes in Caregiver Burden and Caregiving Intensity due to COVID–19, Gerontology and Geriatric Medicine (January 2021), doi:10.1177/2333721421999279.

[165] *Id.*

[166] Jennifer Tolbert et al., Key Facts about the Uninsured Population, Kaiser Family Foundation (November 6, 2020), *https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.*

[167] Joshua Aarons et. al., As the COVID–19 Recession Extended into the Summer of 2020, More Than 3 Million Adults Lost Employer-Sponsored Health Insurance Coverage and 2 Million Became Uninsured, Urban Institute (September 18, 2020), *https://www.urban.org/research/publication/covid-19-recession-extended-summer-2020-more-3-million-adults-lost-employer-sponsored-health-insurance-coverage-and-2-million-became-uninsured.*

[168] Centers for Medicare and Medicaid Services, Medicaid and CHIP Enrollment Trends Snapshot through September 2020 (Washington: 2021), available at *https://www.medicaid.gov/sites/default/files/2021-01/september-medicaid-chip-enrollment-trend-snapshot.pdf.*

[169] Centers for Medicare and Medicaid Services, 2021 Federal Health Insurance Exchange Weekly Enrollment Snapshot: Final Snapshot (January 12, 2021) available at *https://www.cms.gov/newsroom/fact-sheets/2021-federal-health-insurance-exchange-weekly-enrollment-snapshot-final-snapshot.*

[170] Sara R. Collins, Munira Z. Gunja, and Gabriella N. Aboulafia, U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability (New York: Commonwealth Fund, 2020), available at *https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial.*

[171] *Id.*

[172] Federal Deposit Insurance Corporation, FDIC National Survey of Unbanked and Underbanked Households (2015), *https://www.fdic.gov/household survey/2015/2015execsumm.pdf.*

[173] Federal Deposit Insurance Corporation, How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey, *https://www.fdic.gov/analysis/household-survey/2019report.pdf.*

underbanked households—those that have a bank account but rely on alternative financial services, such as money orders, payday loans, and check cashing services— account for 16 percent of all households in the United States.[174] As a result of the COVID–19 pandemic, new social distancing protocols have, in some instances, made it more difficult to perform financial transactions with paper instruments, like banknotes, coinage, paper checks, or money orders. Households constrained to these payment methods may face challenges receiving government assistance. Additionally, businesses have transitioned to cashless payments systems to promote contactless payments.[175] As a result, unbanked individuals may face additional challenges conducting financial transactions.

Treasury Response: Recognizing these challenges, Treasury is clarifying that recipients may use SLFRF funds to provide financial services that facilitate the delivery of federal, state, or local benefits (*e.g.,* Child Tax Credit, Earned Income Tax Credit, tax refunds, or emergency housing or food assistance funds). The following includes a non-exhaustive list of uses to provide financial services to unbanked and underbanked households:

- Provide low or no cost financial services, including in conjunction with administration of benefits, such as pre-paid debit cards, *e.g.,* via Economic Impact Payment or General Purpose Reloadable pre-paid cards or for the development of public banking infrastructure that can support benefit delivery.
- Provide transitional services to facilitate long-term access to banking and financial services.
- Provide financial literacy programs and conduct community outreach and deploy engagement resources to increase awareness about low-cost, no-overdraft fee accounts, pilot new strategies and approaches that help overcome barriers to banking access and support the gathering and sharing of information in ways that improve equity, such as community meetings, partnerships with community-based organizations, online surveys, focus groups, human-centered design activities, and other community engagement activities.

Assistance to Unemployed and Underemployed Workers

The interim final rule included assistance to unemployed workers as an enumerated eligible use, including ''services like job training to accelerate rehiring of unemployed workers.'' Treasury provided further guidance, based on recipient questions after the interim final rule, that eligible uses under this section also include ''other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers[,]'' as well as assistance to unemployed workers seeking to start small businesses. Finally, further guidance also provided that ''public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker's occupation or level of training'' are all enumerated eligible uses as assistance to unemployed or underemployed workers.

The interim final rule defined eligible beneficiaries of assistance as ''individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.'' This definition is based on definitions used by the Bureau of Labor Statistics to define individuals currently unemployed, as well as persons marginally attached to the labor force and working part-time for economic reasons.[176] The latter two classifications are types of labor underutilization, or ''underemployed'' workers.[177] Finally, the interim final rule specified that assistance to unemployed workers included both workers who lost their job during the pandemic and resulting recession and workers unemployed when the pandemic began who saw further deterioration of their economic prospects due to the pandemic.

Public Comment: Commenters generally supported the inclusion of this enumerated eligible use. One commenter recommended including assistance for underemployed workers who took jobs due to the pandemic that did not fully utilize their skillset or did not provide the hours, wages, or job quality desired. Treasury has also received recipient questions on whether job fairs or grants to businesses to hire underserved workers are eligible uses under this category. Another commenter recommended flexibility in eligible workforce development programs, arguing that rural areas may face particular challenges.

Treasury Response: Treasury is maintaining this eligible use in the final rule, including the enumerated eligible services in the interim final rule and subsequent guidance. Treasury is also confirming that job fairs or grants to businesses to hire underserved workers are eligible uses under this section.

Treasury is also enumerating that job and workforce training centers are eligible capital expenditures, so long as they adhere to the standards and presumptions detailed in the section Capital Expenditures in General Provisions: Other.

The final rule maintains the definition of eligible beneficiaries, which is aligned with the Bureau of Labor Statistics' definitions of unemployed workers and other labor underutilization, using a common, widely known definition that incorporates a broad group of individuals both unemployed or whose skills are otherwise underutilized in the labor market.

In addition, recognizing that the pandemic has generated broad workforce disruption, in the final rule, Treasury is making clear that recipients may provide job training or other enumerated types of assistance to individuals that are currently employed but are seeking to move to a job that provides better opportunities for economic advancement, such as higher wages or more opportunities for career advancement.

Recipient Unemployment Insurance Trust Funds and Related Expenses

Under the interim final rule, a recipient may use funds to make deposits into its account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balance of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021. These costs support the solvency of the unemployment insurance system and, ultimately, unemployment insurance benefits provided to unemployed

[174] Board of the Governors of the Federal Reserve System, Report on the Economic Well-Being of U.S. Households in 2018–May 2019, *https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm.*

[175] Zaheer Allam, The Forceful Reevaluation of Cash-Based Transactions by COVID–19 and Its Opportunities to Transition to Cashless Systems in Digital Urban Networks. Surveying the Covid-19 Pandemic and its Implications (2020): 107–117. doi:10.1016/B978–0–12–824313–8.00008–5.

[176] Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Concepts and Definitions, *https://www.bls.gov/cps/definitions.htm* (last visited November 9, 2021).

[177] *Id.*

workers during the pandemic.[178] The interim final rule also posed the question of what, if any, conditions should be considered to ensure that funds used under this eligible use category repair economic impacts of the pandemic and strengthen unemployment insurance systems.

Public Comment: Inclusion as an Eligible Use and Conditions: Commenters expressed mixed perspectives on this eligible use category. Some commenters supported its inclusion, arguing that unemployment insurance systems have faced significant costs to support unemployed workers during the pandemic and that this constitutes a negative economic impact that SLFRF funds should be able to address. Other commenters opposed this eligible use category, arguing that funds used under this category may not ultimately support unemployed workers. Some commenters noted that unemployment insurance taxes on businesses automatically increase when trust fund balances are low and suggested that permitting the deposit of funds into unemployment insurance trust funds prevents a tax increase on businesses, some of which may not have faced negative economic impacts from the pandemic, rather than providing assistance to unemployed workers. Other comments suggested that deposits are better thought of as savings for future needs than assistance to unemployed workers in the near term.

Responding to the interim final rule's question, several commenters suggested that, if Treasury maintains this eligible use, the final rule should require detailed reporting on funds used under this category or place conditions on this category to increase the likelihood that funds ultimately support unemployed workers. For example, some commenters suggested that recipients that deposit SLFRF funds into their trust fund should be barred from cutting unemployment insurance benefits for workers during the period of performance or from erecting new barriers to accessing benefits (*e.g.,* through the application process and ongoing requirements to receive benefits). One commenter, noting that unemployment insurance benefits often provide low rates of wage replacement and do not cover some types of unemployed workers, argued that recipients should not be permitted to deposit funds into the trust fund unless the recipient concurrently expands benefits. Finally, one commenter suggested a cap on the amount of funds that can be used for this purpose.

Treasury Response: Inclusion as an Eligible Use and Conditions: In the final rule, Treasury is maintaining the inclusion of this eligible use category. Because unemployment insurance trust funds directly fund benefits to unemployed workers, maintaining the solvency of the trust fund is critical to the continued provision of assistance to unemployed workers. Further, funds deposited into the trust fund must be used as assistance to unemployed workers, an eligible use of SLFRF funds. Finally, while, in the absence of the SLFRF, trust fund deposits would likely be funded through increases on employer payroll taxes, the eligibility of uses of SLFRF funds does not depend on how obligations would otherwise be satisfied if the SLFRF were not available for this use.

While deposits to unemployment insurance trust funds generally serve as assistance to unemployed workers, recipients that make deposits but also cut unemployment insurance benefits to workers substantially decrease the likelihood that the deposited funds will assist unemployed workers. In other words, SLFRF funds deposited into an unemployment insurance trust fund generally serve as assistance to unemployed workers, unless recipients take policy actions that substantially decrease the extent to which SLFRF funds would flow to unemployed workers. As such, through December 31, 2024, recipients that deposit SLFRF funds into an unemployment insurance trust fund or use SLFRF funds to repay principal on Title XII advances, may not take action to reduce benefits available to unemployed workers by changing the computation method governing regular unemployment compensation in a way that results in a reduction of average weekly benefit amounts or the number of weeks of benefits payable (*i.e.,* the maximum benefit entitlement).

Finally, until the final rule becomes effective on April 1, 2022, the interim final rule remains binding and effective.[179] These requirements were not in effect under the interim final rule and do not apply to funds used (*i.e.,* obligated or expended) under the interim final rule while it is in effect. In addition, recognizing that some recipients have taken significant steps toward making a trust fund deposit or repaying principal on Title XII advances under the interim final rule, such as the legislative appropriation of funds for this purpose, even if a formal obligation has not occurred, Treasury will exercise enforcement discretion to not pursue violations of this final rule provision (*i.e.,* the requirement not to reduce benefits) for recipients that have appropriated funds for this purpose prior to the date of adoption of the final rule consistent with the laws and procedures in their jurisdiction. Recipients should refer to Treasury's Statement Regarding Compliance with the Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule and Final Rule, which provides additional detail on these issues.

Public Comment and Treasury Response: Technical Corrections and Amendments: Following the interim final rule, Treasury received recipient questions on whether paying interest on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) is an eligible use of SLFRF funds; Treasury is clarifying that such use is permissible, consistent with Treasury's treatment of the eligibility of interest on Title XII advances under the Coronavirus Relief Fund.

Treasury is further clarifying that recipients may only use SLFRF funds for contributions to unemployment insurance trust funds and repayment of the principal amount due on advances received under Title XII of the Social Security Act up to an amount equal to (i) the difference between the balance in the recipient's unemployment insurance trust fund as of January 27, 2020 and the balance of such account as of May 17, 2021, plus (ii) the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021. Further, recipients may use SLFRF funds for the payment of any interest due on such Title XII advances. In other words, excluding interest due on Title XII advances, the magnitude of the decrease of the balance in the unemployment insurance trust fund plus the principal outstanding on any Title XII borrowings made from the beginning of the public health emergency to the date of publication of the SLFRF interim final rule sets a cap on the amount of SLFRF funds a recipient may use for trust fund contributions and repayment of principal on Title XII advances. Further, a recipient that deposits SLFRF funds into its unemployment insurance trust fund to fully restore the pre-pandemic balance may not draw down that

[178] Note that, while the economic harm being addressed accrued before March 3, 2021, the cost incurred to address the harm occurs after March 3, 2021 and provides assistance to unemployed workers, an eligible use of SLFRF funds.

[179] *See, e.g.,* U.S. Department of the Treasury, More Information on the Conclusion of the Public Comment Period and the Interim Final Rule on the Coronavirus State and Local Fiscal Recovery Funds, *https://home.treasury.gov/system/files/136/IFR-Explainer.pdf.*

balance and deposit more SLFRF funds, back up to the pre-pandemic balance.

Enumerated Eligible Uses for Disproportionately Impacted Households

Background

The COVID–19 pandemic has had disproportionally negative impacts on many households and communities that were already experiencing inequality related to race, gender, age, or income before the pandemic. People of color, low-income workers, and women disproportionately lost their jobs during the COVID–19 pandemic and experienced disproportionate rates of negative health outcomes.[180] [181]

These disproportionate negative impacts experienced by systemically underserved communities are not novel to the COVID–19 pandemic and the economic downturn. Research shows that historically underserved communities that are experiencing economic and social disparities typically experience disproportionate impacts of economic downturns and natural disasters.[182] This pattern held true for the effects of COVID–19 and the economic downturn: Historically undeserved groups experienced amplified negative impacts, further widening inequality.[183]

Many communities facing systemic barriers had not yet recovered from the impact of the Great Recession before experiencing the impacts of COVID–19 and the economic downturn. For example, in 2009, at the end of the Great Recession, households without a high school diploma had an average annual income of $32,300 (measured in 2018 dollars). By 2018, nine years into the economic recovery, those same households saw their average income increase by $600. During that same time period, households with a bachelor's degree saw an increase in their average household income of $6,100 (measured in 2018 dollars).[184]

The impact pre-existing inequalities have on a household or community's ability to recover is intersectional. Research shows that pre-existing racial and gender disparities exacerbated the disproportionate economic and health impact COVID–19 and the economic downturn had on workers of color, and specifically, women of color.[185] Another study found that during the first six months of the pandemic counties that were both high-poverty and majority non-white experienced COVID–19 infection rates eight times higher than high-poverty, majority white counties.[186] Many residents in these communities are still coping with the negative health and economic impacts.

Summary of the Interim Final Rule and Final Rule Structure

As described previously, the interim final rule provided a broader list of enumerated eligible uses to respond to the pandemic in disproportionately impacted communities, in recognition that pre-existing health, economic, and social disparities contributed to disproportionate pandemic impacts in certain communities and that addressing the root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. The interim final rule described eligible uses in disproportionately impacted communities in four categories, spread across public health and negative economic impacts: (1) Addressing disparities in public health outcomes, (2) building stronger communities through investments in housing and neighborhoods, (3) addressing educational disparities, and (4) promoting healthy childhood environments. As described above, Treasury has moved eligible uses related to community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, healthy childhood environments, and addressing lost instructional time in K–12 schools into the category ''assistance to impacted households,'' recognizing that these pandemic impacts were widely shared across the country.

This section discusses enumerated eligible uses to address health disparities, to build stronger communities through investments in neighborhoods, to address educational disparities, to provide rental assistance vouchers or assistance relocating to areas of greater economic opportunity, and additional eligible uses to respond to negative economic impacts in disproportionately impacted communities. While many of these services impact both health and economic outcomes, Treasury has consolidated them into a single section for simplicity and clarity and to reflect the intertwined nature of these issues.

As a reminder, recipients can presume these uses are eligible when provided in a QCT, to families and individuals living in QCTs, by Tribal or territorial governments, or to low-income households or communities. As provided in section Standards: Designating Other Disproportionately Impacted Classes, recipients can also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. Recipients may also identify additional disproportionate impacts of the pandemic and design an appropriate response to address that harm. For details on eligibility standards and presumed eligible populations, see section General Provisions: Structure and Standards.

Enumerated Eligible Uses for Disproportionately Impacted Households

1. Addressing health disparities.

Public Comment: General: In general, commenters supported eligible uses to address health disparities and support health equity; several commenters highlighted the disparities faced by communities of color and low-income populations, as well as the importance of community engagement in developing effective programs to serve disproportionately impacted communities. Many commenters recommended additional enumerated eligible uses to address health disparities; these are discussed further below in this section.

Treasury Response: In line with commenters' recommendations, the final rule maintains several enumerated eligible uses to address health disparities, specifically:

a. Community health workers. Treasury received few comments on community health workers, though one

[180] U.S. Department of Health and Human Services, COVID–19 and Economic Opportunity: Inequities in the Employment Crisis, April 2021. Retrieved from *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199901/covid-economic-equity-brief.pdf.*

[181] Adelle Simmons et al., Health disparities by race and ethnicity during the COVID–19 pandemic: Current evidence and policy approaches. U.S. Department of Health and Human Services *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//199516/covid-equity-issue-brief.pdf.*

[182] Perry, Brea L., Brian Aronson, and Bernice A. Pescosolido, Pandemic precarity: COVID–19 is exposing and exacerbating inequalities in the American heartland, National Academy of Sciences (Febuary 2021), *https://www.pnas.org/content/118/8/e2020685118.*

[183] *Id.*

[184] Jesse Bennet & Rakesh Kochhar, Two Recessions, Two Recoveries, Pew Research Center (December 13, 2019), *https://www.pewresearch.org/social-trends/2019/12/13/two-recessions-two-recoveries-2/.*

[185] Darrick Hamilton et al., Building an Equitable Recovery: The role of Race, Labor Markets, and Education, The New School's Institute on Race and Political Economy (February 2021).

[186] Adhikari S, Pantaleo NP, Feldman JM, Ogedegbe O, Thorpe L, Troxel AB. Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID–19) Infections and Deaths in Large US Metropolitan Areas. JAMA Netw Open. 2020;3(7):e2016938. doi:10.1001/jamanetworkopen.2020.16938.

requested further clarification on their role.[187] Treasury is maintaining this eligible use in the final rule.

b. Remediation of lead paint or other lead hazards. The interim final rule included remediation of lead paint or other lead hazards as an enumerated eligible use to address health disparities.

Public Comment: Treasury received several comments asking for clarification on the eligibility of a particular use that would indirectly address lead pollution. For example, a commenter requested the ability to fund remedial actions, such as filtration and plumbing procedures to help address lead pollution. One commenter requested that private wells be eligible for funding to address contamination with substances such as lead. Other commenters requested that Treasury allow replacement of lead pipes as an eligible use of funds.

Treasury Response: Recipients may make a broad range of water infrastructure investments under section 602(c)(1)(d) and 603(c)(1)(d), which can include lead service line replacement and other activities to identify and remediate lead in water. These uses are discussed in greater detail in section Water and Sewer Infrastructure of this Supplemental Information.

Treasury has further determined that several of the services identified by commenters are appropriate responses to address health disparities in disproportionately impacted households. These services were eligible under the interim final rule and continue to be so under the final rule. These services include remediation to address lead-based public health risk factors, outside of lead in water, including evaluation and remediation of lead paint, dust, or soil hazards; testing for blood lead levels; public outreach and education; and emergency protection measures, like bottled water and water filters, in areas with an action level exceedance for lead in water in accordance with the Environmental Protection Agency's Lead and Copper Rule.[188]

Further, Treasury had determined that certain capital expenditures, including improvements to existing facilities to remediate lead contaminants (*e.g.,* removal of lead paint), are eligible responses, although this does not include construction of new facilities for the purpose of lead remediation. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

c. Medical facilities. Treasury received a few comments from recipients seeking to use SLFRF funds to build new medical facilities, such as hospitals or public health clinics, to serve disproportionately impacted communities. Given the central role of access to high-quality medical care in reducing health disparities and addressing the root causes that led to disproportionate impact COVID–19 health impacts in certain communities, the final rule recognizes that medical equipment and facilities designed to address disparities in public health outcomes are eligible capital expenditures. This includes primary care clinics, hospitals, or integrations of health services into other settings. Recipients should make sure that all capital expenditures adhere to the standards and presumptions detailed in section Capital Expenditures in General Provisions: Other.

2. Housing vouchers and assistance relocating. In addition to other housing services, the interim final rule permitted a variety of rental assistance approaches to support low-income households in securing stable, long-term housing, including housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents. Examples could include SLFRF-funded analogues to Section 8 Housing Choice vouchers; other kinds of rent subsidies, including shallow subsidies; and programs to help residents move to areas with higher levels of economic mobility.[189] Treasury did not receive public comments on these enumerated eligible uses.

Treasury Response: Treasury maintains the eligibility of vouchers and relocation assistance in the final rule.

3. Building strong, healthy communities through investments in neighborhoods. While the interim final rule included a category of enumerated eligible uses for ''building stronger communities through investments in housing and neighborhoods,'' the examples of services provided generally focused on housing uses. In response to questions following release of the interim final rule, Treasury issued further guidance clarifying that ''investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by promoting healthier living environments.''

Public Comment: General: A significant theme across many public comments was the importance of neighborhood environment to health and economic outcomes and the potential connections between residence in an underserved neighborhood and disproportionate impacts from the pandemic. Many commenters highlighted the connection between neighborhoods and health outcomes, including citing public health research linking neighborhood traits to health outcomes. For example, the CDC states that ''neighborhoods people live in have a major impact on their health and well-being.'' [190] As such, CDC identifies ''neighborhoods and built environment'' as one of five key social determinants of health [191] and includes ''creat[ing] neighborhoods and environments that promote health and safety'' as one of the agency's goals for social determinants of health outcomes.

a. Neighborhood features that promote improved health and safety outcomes.

Public Comment: Commenters argued that neighborhoods impact physical health outcomes in several ways. First, some commenters reasoned that the physical environment and amenities in a community [192] influence a person's level of physical activity, with features like parks, recreation facilities, and safe sidewalks promoting increased physical activity that improves health outcomes. Conversely, commenters argued that a lack of these features in a neighborhood could dampen physical activity and contribute to health conditions like obesity that are risk factors for more severe COVID–19 health outcomes.

Second, some commenters also suggested that access to healthy food in a neighborhood impacts health outcomes. These commenters reasoned

[187] *See, e.g.,* Centers for Disease Control and Prevention, Community Health Worker (CHW) Toolkit, *https://www.cdc.gov/dhdsp/pubs/toolkits/chw-toolkit.htm* (last visited November 9, 2021).

[188] Environmental Protection Agency, 40 CFR 141.80(c)(1), *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-141/subpart-I/section-141.80.*

[189] *See, e.g.,* Opportunity Insights, Creating Moves To Opportunity (August 2019), *https://opportunityinsights.org/policy/cmto/.*

[190] U.S. Department of Health and Human Services, Neighborhood and Built Environment, *https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment#cit1* (last visited November 9, 2021).

[191] Social determinants of health are ''the conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes.'' Centers for Disease Control and Prevention, About Social Determinants of Health (SDOH), *https://www.cdc.gov/social determinants/about.html* (last visited November 9, 2021).

[192] In public health, this is referred to as ''built environment,'' or the man-made physical aspects of a community (*e.g.,* homes, buildings, streets, open spaces, and infrastructure).

that lacking adequate access to affordable, healthy food or living in a ''food desert'' may contribute to disparities in diet that influence health outcomes, including contributing to pre-existing conditions that increased risk for severe COVID–19 outcomes. These commenters cited public health research finding ''clear evidence for disparities in food access in the United States by income and race.'' [193]

Some commenters also suggested that neighborhood environment is connected to other public health outcomes, like mental health and public safety. For example, some research suggests that living in neighborhoods with green space and tree cover correlates with improved mental health outcomes.[194] Finally, some commenters argued that activities like installing streetlights, greening or cleanup of public spaces or land, and other efforts to revitalize public spaces would support improved public safety.[195] [196]

These commenters recommended that Treasury include as an enumerated eligible use in disproportionately impacted communities projects to develop neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks, projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces.

Background: Investments in neighborhood features, including parks, recreation facilities, sidewalks, and healthy food access, can work to improve physical and mental health outcomes. Allowing people access to nature, including parks, has been connected to decreased levels of mortality and illness and increased well-being.[197] Urban park use during the COVID–19 pandemic may have declined among lower-income individuals.[198] Encouraging physical activity can also play a role in health outcomes, as a sedentary lifestyle is a risk factor for chronic diseases and more severe COVID–19 outcomes.[199] Parks, recreation facilities, and sidewalks can promote healthier living environments by allowing for safe and socially distanced recreation during the COVID–19 pandemic.

Additionally, food insecurity rates, which are higher among lower-income households and households of color, doubled among all households and tripled among households with children during the onset of COVID–19 from February 2020 to May 2020.[200] Improving healthy food access supports public health, particularly among lower-income households and households of color that face disproportionate outcomes.

Treasury Response: Treasury recognizes the connection between neighborhood built environment and physical health outcomes as discussed in the research and analysis provided by commenters, including risk factors that may have contributed to disproportionate COVID–19 health impacts in low-income communities. The final rule also recognizes that the public health impacts of the pandemic are broader than just the COVID–19 disease itself and include substantial impacts on mental health and public safety challenges like rates of violent crime, which are correlated with a neighborhood's built environment and features. As such, neighborhood features that promote improved health and safety outcomes respond to the pre-existing disparities that contributed to COVID–19's disproportionate impacts on low-income communities.

The final rule includes enumerated eligible uses in disproportionately impacted communities for developing neighborhood features that promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety features like crosswalks,[201] projects that increase access to healthy foods, streetlights, neighborhood cleanup, and other projects to revitalize public spaces. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other, which describes additional eligibility standards that apply to uses of funds for capital expenditures.

b. Vacant or abandoned properties. As discussed above, the interim final rule included enumerated eligible uses for building stronger communities through investments in housing and neighborhoods in disproportionately impacted communities. The interim final rule also posed a question of whether other potential uses in this category, specifically ''rehabilitation of blighted properties or demolition of abandoned or vacant properties,'' address the public health or economic impacts of the pandemic.

Public Comment: Several commenters argued that programs or services to address vacant or abandoned property would respond to the public health and negative economic impacts of the pandemic in disproportionately impacted communities. Some commenters cited research suggesting that living near such property is correlated with worse physical health and mental health outcomes, noted that such properties pose an environmental hazard, or argued that such properties present a barrier to economic recovery. These commenters suggested that renovation or demolition of vacant or abandoned property could benefit community health and raise property values. Other commenters recommended that Treasury include an enumerated eligible use for the operation of land banks that redevelop or renew vacant properties and land.

Treasury Response: As noted throughout the final rule, the pandemic underscored the importance of safe, affordable housing and healthy

[193] J Beaulac, E Kristjansson, S Cummins, A systematic review of food deserts, 1966–2007, Prev Chronic Dis 2009;6(3):A105, *http://www.cdc.gov/pcd/issues/2009/jul/08_0163.htm.*

[194] *See, e.g.,* Yijun Zhang et al. The Association between Green Space and Adolescents' Mental Well-Being: A Systematic Review. International journal of environmental research and public health vol. 17,18 6640 (Sep. 11 2020), doi:10.3390/ijerph17186640; EC South, BC Hohl, MC Kondo, JM MacDonald, CC Branas, Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial, JAMA Netw Open. 2018;1(3):e180298 (2018), available at: doi:10.1001/jamanetworkopen.2018.0298.

[195] *See, e.g.,* Yanqing Xu, Cong Fu, Eugene Kennedy, Shanhe Jiang, Samuel Owusu-Agyemang, The impact of street lights on spatial-temporal patterns of crime in Detroit, Michigan, Cities, Volume 79, Pages 45–52, ISSN 0264–2751 (2018), *https://doi.org/10.1016/j.cities.2018.02.021.*

[196] A. Chalfin, B. Hansen, J. Lerner et al., Reducing Crime Through Environmental Design: Evidence from a Randomized Experiment of Street Lighting in New York City, Journal of Quantitative Criminology (2021), *https://doi.org/10.1007/s10940-020-09490-6.*

[197] *See, e.g.,* American Public Health Association, Improving Health and Wellness through Access to Nature (November 5, 2013), *https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/08/09/18/improving-health-and-wellness-through-access-to-nature.*

[198] LR Larson et al., Urban Park Use During the COVID–19 Pandemic: Are Socially Vulnerable Communities Disproportionately Impacted?, Front. Sustain. Cities 3:710243 (2021), *https://doi.org/10.3389/frsc.2021.710243.*

[199] JP Després, Severe COVID–19 outcomes—the role of physical activity. Nat Rev Endocrinol 17, 451–452 (2021). *https://doi.org/10.1038/s41574-021-00521-1.*

[200] Caroline George and Adie Tomer, Beyond 'food deserts': America needs a new approach to mapping food, Brookings Institution (August 17, 2021), *https://www.brookings.edu/research/beyond-food-deserts-america-needs-a-new-approach-to-mapping-food-insecurity/.*

[201] However, Treasury cautions recipients that general infrastructure development, including street or road construction, remains a generally ineligible use of funds under the final rule. Sidewalks and pedestrian safety should be the predominant component of uses of funds in this category. While projects may include ancillary construction needed to execute the predominant component, a project that predominantly involves street construction or repair to benefit vehicular traffic would be ineligible.

neighborhood environments to public health and economic outcomes. Treasury agrees with commenters that high rates of vacant or abandoned properties in a neighborhood may exacerbate public health disparities, for example through environmental contaminants that contribute to poor health outcomes or by contributing to higher rates of crime. As such, certain services for vacant or abandoned properties are eligible to address the public health and negative economic impacts of the pandemic on disproportionately impacted households or communities. Eligible activities include:

- Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties to reduce their negative impact
- Costs associated with acquiring and securing legal title of vacant or abandoned properties and other costs to position the property for current or future productive use
- Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties, when conducted in compliance with applicable environmental laws or regulations
- Demolition or deconstruction of vacant or abandoned buildings (including residential, commercial, or industrial buildings) paired with greening or other lot improvement as part of a strategy for neighborhood revitalization
- Greening or cleanup of vacant lots, as well as other efforts to make vacant lots safer for the surrounding community
- Conversion of vacant or abandoned properties to affordable housing
- Inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition, greening, or other remediation activities

Vacant or abandoned properties are generally those that have been unoccupied for an extended period of time or have no active owner.[202] Such properties may be in significant disrepair (*e.g.,* major structural defects; lack of weather tight conditions; or lack of useable plumbing, kitchen facilities, electricity, or heating infrastructure (not to include utilities currently out of service or disconnected but able to be reconnected and used)), or may be declared unfit for inhabitants by a government authority.

As noted above, demolition and greening (or other structure or lot remediation) of vacant or abandoned properties, including residential, commercial, or industrial buildings, is an eligible use of funds. Treasury encourages recipients to undertake these activities as part of a strategy for neighborhood revitalization and to consider how the cleared property will be used to benefit the disproportionately impacted community. Activities under this eligible use should benefit current residents and businesses, who experienced the pandemic's impact on the community.

Treasury encourages recipients to be aware of potential impacts of demolition of vacant or abandoned residential properties. Demolition activities that exacerbate the pandemic's impact on housing insecurity or lack of affordable housing are not eligible uses of funds. This risk is generally more acute in jurisdictions with low or reasonable vacancy rates and less acute in jurisdictions with high or hyper-vacancy.[203]

Treasury presumes that demolition of vacant or abandoned residential properties that results in a net reduction in occupiable housing units for low- and moderate-income individuals in an area where the availability of such housing is lower than the need for such housing would exacerbate the impacts of the pandemic on disproportionately impacted communities and that use of SLFRF funds for such activities would therefore be ineligible. This includes activities that convert occupiable housing units for low- and moderate-income individuals into housing units unaffordable to current residents in the community. Recipients may assess whether units are ''occupiable'' and what the housing need is for a given area taking into account vacancy rates (as described above), local housing market conditions (including conditions for different types of housing like multi-family or single-family), and applicable law and housing codes as to what units are occupiable. Recipients should also take all reasonable steps to minimize the displacement of persons due to activities under this eligible use category, especially the displacement of low-income households or longtime residents.

Recipients engaging in these activities and other construction activities with SLFRF funds should be mindful of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601, and the Department of Transportation's implementing regulations, 49 CFR part 24, that apply to projects funded with federal financial assistance, such as SLFRF funds. Recipients should also be aware of federal, state, and local laws and regulations, outside of SLFRF program requirements, that apply to this activity. Recipients must comply with the applicable requirements of the Uniform Guidance regarding procurement, contracting, and conflicts of interest and must follow the applicable laws and regulations in their jurisdictions. Recipients must also comply with all federal, state, and local public health and environmental laws or regulations that apply to activities under this eligible use category,[204] for example, requirements around the

[202] A state or locality may use its existing classifications of what is considered vacant or abandoned property under state law and local ordinances, as well as any corresponding processes for demolition, for these eligible uses. A recipient without a definition of vacant or abandoned property may refer to definitions used in the Department of Housing and Urban Development's Neighborhood Stabilization Program (available at the citations below); however, recipients should be aware that other federal, state, or local requirements may apply such as compliance with the Uniform Relocation Act (*see* U.S. Department of Housing and Urban Development, Real Estate Acquisition and Relocation Overview in HUD Programs, *https://www.hudexchange.info/programs/relocation/overview/#overview-of-the-ura* (last visited November 9, 2021) and other state and local requirements like condemnation and code enforcement. U.S. Department of Housing and Urban Development, What is the definition of vacant properties as referenced in NSP Eligible Use E—Redevelop Demolished or Vacant Properties? (October 2012), *https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/redevelopment/what-is-the-definition-of-vacant-properties-as-referenced-in-nsp-eligible/.* U.S. Department of Housing and Urban Development, What are the definitions of abandoned and foreclosed? (October 2012), *https://www.hudexchange.info/faqs/programs/neighborhood-stabilization-program-nsp/program-requirements/eligible-activitiesuses/what-are-the-definitions-of-abandoned-and-foreclosed/.*

[203] For analysis of vacancy rates considered low or high, see, *e.g.,* page 12 of Alan Mallach, The Empty House Next Door, Lincoln Institute (May 2018), *https://www.lincolninst.edu/publications/policy-focus-reports/empty-house-next-door#:~:text=%E2%80%9CAlan%20Mallach%20is%20the%20sage,through%20data%20and%20model%20* practices. Recipients may determine the appropriate geographic unit for which to analyze vacancy rates (*e.g.,* county, census tract) based on their circumstances. As needed, recipients may refer to the Current Population Survey/Housing Vacancy Survey data series on Housing Vacancies and Homeownership as one data source to assess vacancy rates. See *https://www.census.gov/housing/hvs/index.html.* Other data sources include the American Community Survey five-year estimates, for smaller geographic areas, or tabulations by the Department of Housing and Urban Development based on United States Postal Service Vacancy Data. See, respectively, *https://data.census.gov/cedsci/table?q=DP04&tid=ACSDP5Y2019.DP04&hidePreview=true* or *https://www.huduser.gov/portal/datasets/usps.html.*

[204] *See* U.S. Environmental Protection Agency, Large-Scale Residential Demolition, *https://www.epa.gov/large-scale-residential-demolition* (last visited November 9, 2021) for a primer on requirements that may apply.

handling and disposal of asbestos-containing materials, lead paint, and other harmful materials may apply, as well as environmental standards for any backfill materials used at demolition sites. Treasury encourages recipients to consult and apply best practices from the Environmental Protection Agency as well.

Recipients must evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward related to safely and properly conducting activities under this eligible use. This may include checking for any past violations recorded by state or local environmental, workplace safety, licensing, and procurement agencies, as well as regular reviews for suspensions, debarments, or stop work orders. Recipients must establish rigorous oversight and internal controls processes to monitor compliance with any applicable requirements, including compliance by subrecipients.

4. Addressing educational disparities. The interim final rule included an enumerated eligible use for addressing educational disparities in disproportionately impacted communities and outlined some enumerated eligible services under this use. These enumerated uses included early learning services, assistance to high-poverty school districts to advance equitable funding across districts and geographies, and educational and evidence-based services to address the academic, social, emotional, and mental health needs of students. Addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—can also begin to mitigate the impact of COVID–19 on schools and students and can close long-standing gaps in educational opportunity. As discussed above, in the final rule, early learning services and addressing the impacts of lost instructional time for K–12 students are enumerated eligible uses for impacted communities, not just disproportionately impacted communities.

Public Comment: Treasury received some comments in this category. Generally, commenters expressed agreement with the elements of the interim final rule regarding use of funds for addressing educational disparities. Some commenters had questions about whether a few specific uses of funds qualified under this category. For example, commenters inquired about whether the funds could be used for behavioral health in a school setting or cultural language classes.

Treasury Response: Treasury is maintaining these enumerated eligible uses in the final rule, which are now organized under the heading of ''services to address educational disparities.'' Treasury reiterates that these uses include addressing educational disparities exacerbated by COVID–19, including but not limited to: increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, summer education and enrichment programs, and supports for students' social, emotional, and mental health needs. This also includes responses aimed at addressing the many dimensions of resource equity—including equitable and adequate school funding; access to a well-rounded education; well-prepared, effective, and diverse educators and staff; and integrated support services—in order to close long-standing gaps in educational opportunity.

Further, Treasury is clarifying that improvements or new construction of schools and other educational facilities or equipment are eligible capital expenditures for disproportionately impacted communities. Recipients seeking to use funds for capital expenditures should refer to the section Capital Expenditures in General Provisions: Other for additional eligibility standards that apply to uses of funds for capital expenditures.

Treasury notes that services to promote healthy childhood environments, including childcare, early learning services, and home visiting programs that serve infants and toddlers, is a separate category of enumerated eligible uses for households impacted by the pandemic (see eligible uses for ''promoting healthy childhood environments''). Similarly, education services to address the impact of lost instructional time during the pandemic are a separate eligible use category for households impacted by the pandemic; when providing these services, recipients may presume that any K–12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services (see eligible uses for ''addressing the impact of lost instructional time'').

Proposed Additional Enumerated Eligible Uses Not Incorporated

The interim final rule posed a question on what other types of services or costs Treasury should consider as eligible uses to respond to the disproportionate public health or negative economic impacts of COVID–19 on low-income populations and communities.

In response, commenters proposed a wide variety of additional recommended enumerated eligible uses to assist disproportionately impacted households, ranging from general categories of services (*e.g.,* long-term investments to remediate long-term disparities) to highly specific examples of services (*e.g.,* a specific type of healthcare equipment). As discussed above, Treasury is including several additional categories of enumerated eligible uses in the final rule in response to public comments.

Given the large number and diversity of SLFRF recipients, Treasury's approach to assistance to households in disproportionately impacted communities in the final rule aims to provide enumerated eligible uses that respond to disproportionate impacts of the pandemic experienced widely in many jurisdictions across the country and are intended to simplify and clarify these enumerated eligible uses. At the same time, Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify additional disproportionate impacts to additional households or classes of households and pursue programs and services that respond to those disproportionate impacts.

In the final rule, Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to disproportionate impacts experienced in many jurisdictions across the country, supporting an enumerated eligible use available to all recipients presumptively. However, the final rule continues to provide a framework to allow recipients to identify and respond to additional disproportionate impacts (for details, see section General Provisions: Structure and Standards). Some types of proposed additional enumerated eligible uses for assistance to households in disproportionately impacted communities were recommended by several commenters:

- Capital expenditures. Many commenters recommended that capital expenditures on many different types of public and private facilities be enumerated eligible uses. For clarity, Treasury has addressed all comments on the eligibility of capital expenditures on property, facilities, or equipment in one

section (see section Capital Expenditures in General Provisions: Other).

• Equity funds. Several commenters recommended that Treasury permit SLFRF funds to be deposited into an equity fund to support long-term racial and economic equity investments. The eligibility of such use would depend on the specific structure and uses of funds. Under the statute, SLFRF funds can only support costs incurred until December 31, 2024; see section Timeline for Use of SLFRF Funds in Program Administration Provisions. Further, recipients may calculate the cost incurred with respect to investments in revolving loan funds based on the methodology described in section Treatment of Loans in Program Administration Provisions. Projects funded by a revolving loan fund using SLFRF funds would also need to be eligible uses of SLFRF funds.

• Environmental quality and climate resilience. Several commenters recommended eligible uses to enhance environmental quality, remediate pollution, promote recycling or composting, or increase energy efficiency or electrical grid resilience. Whether these projects respond to the disproportionate impacts of the pandemic on certain communities would depend on the specific issue they address and its nexus to the public health and economic impacts of the pandemic.

b. Assistance to Small Businesses

Background

The pandemic has severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment [205] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[206] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[207] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[208] The negative outlook for small businesses has continued: As of November 2021, approximately 66 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[209]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[210] In general, small businesses can face greater hurdles in accessing credit,[211] and many small businesses were already financially fragile at the outset of the pandemic.[212]

While businesses everywhere faced significant challenges during the pandemic, minority-owned and very small businesses have faced additional obstacles. Between February and April 2020, the number of actively self-employed Black business owners decreased by 41 percent.[213] During that same time period, Asian and Latino business owners decreased by 26 and 32 percent, respectively, compared to a 17 percent decrease in white business owners.[214] Female business owners also saw significant impacts, with businesses owned by women falling by 25 percent.[215]

Many of the disparities in how minority business owners experienced the pandemic are rooted in systemic issues present even before the pandemic. For example, before the economic downturn, only 12 percent of Black-owned businesses and 19 percent of Hispanic-owned businesses had annual earnings of over $1 million compared to 31 percent of white-owned businesses.[216] Minority-owned businesses were also overrepresented in industries hit hardest by the economic downturn (*e.g.,* services, transportation and warehousing, healthcare and social assistance, administrative and support and waste management, and accommodation and food services).[217] Approximately 22 percent of all minority-owned business fell into the hardest hit industries compared to 13 percent of nonminority-owned businesses.[218]

Although disparities in annual revenue are not a direct indication of a business's ability to weather an economic downturn, they do highlight other disparities that make it more challenging for these businesses to survive the effects of the pandemic. Black-owned startups, for example, face larger challenges in raising capital, including securing business loans.[219]

Summary of the Interim Final Rule and Final Rule Structure

Summary of Interim Final Rule: As discussed above, small businesses faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. Under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may ''respond to the public health emergency or its negative economic impacts,'' by, among other things, providing ''assistance to . . . small businesses.'' Accordingly, the interim final rule allowed recipients to provide assistance to small businesses to address the negative economic impacts faced by those businesses. A

[205] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), *https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.*

[206] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), *https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.*

[207] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), *https://www.whitehouse.gov/briefing-room/speechesremarks/2021/02/22/remarks-by-president-bidenon-helping-small-businesses/.*

[208] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID–19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[209] U.S. Census Bureau, Small Business Pulse Survey, *https://portal.census.gov/pulse/data/* (last visited December 7, 2021).

[210] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID–19 Pandemic (Nov. 2020), *https://www.nber.org/papers/w28151.*

[211] *See, e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.*

[212] Alexander W. Bartik et al., The Impact of COVID–19 on small business outcomes and expectations, PNAS 117(30): 17656–66 (July 28, 2020), *available at https://www.pnas.org/content/117/30/17656.*

[213] Robert Fairlie, The impact of COVID–19 on small business owners: Evidence from the first 3 months after widespread social-distancing restrictions, Journal of economics & management strategy (August 27, 2020), *https://doi.org/10.1111/jems.12400.*

[214] U.S. Small Business Administration, The Effects of the COVID–19 Pandemic on Small Businesses (March 2021), *https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.*

[215] Robert Fairlie, *supra* note 213.

[216] Federal Reserve Bank of Atlanta. 2019. Small Business Credit Survey 2019 Report on Minority-Owned Firms. December. *fedsmallbusiness.org/survey/2019/report-on-minority-owned-firms.*

[217] Ding, Lei, and Alvaro Sanchez. 2020. What Small Businesses Will Be Impacted by COVID–19? Federal Reserve Bank of Philadelphia. *philadelphiafed.org/covid-19/covid-19-equity-in-recovery/what-small-businesses-will-be-impacted.*

[218] Lucas Misera, An Uphill Battle: COVID–19's Outsized Toll on Minority-Owned Firms, Federal Reserve Bank of Cleveland (October 8, 2020), *https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx.*

[219] Robert Fairlie, A. Robb, D. Robinson, Black and White: Access to Capital among Minority-Owned Startups, NBER Working Paper 28154 (November 2020), *https://www.nber.org/papers/w28154.*

''small business'' is defined as a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates; and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Specifically, the interim final rule provided that recipients may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID–19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure;
- Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics; and
- Technical assistance, counseling, or other services to assist with business planning needs.

The interim final rule further provided that recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (*e.g.,* comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving underserved communities. The interim final rule also indicated that recipients should consider local economic conditions and business data when establishing such criteria. Finally, the interim final rule posed a question on whether there are other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID–19 on low-income populations and communities.

Final Rule Structure: Consistent with the interim final rule approach, the final rule provides a non-exhaustive list of enumerated eligible uses for assistance to small businesses that are impacted or disproportionately impacted by the pandemic. Further, within Assistance to Small Business, a recipient may also identify a negative economic impact experienced by small businesses and design and implement a response to that negative economic impact, beyond the uses specifically enumerated in the final rule, according to the standard described in the section Standards: Identifying a Negative Economic Impact. A recipient may also identify small businesses that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact.

Consistent with other eligible use categories to respond to the public health and economic impacts of the pandemic, recipients may identify and serve small businesses that experienced a negative economic impact or disproportionate impact due to the pandemic, as described in the section Standards for Identifying Other Eligible Populations. For example, to identify impacted small businesses, a recipient may consider whether the small businesses faced challenges in covering payroll, mortgage or rent, or other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. In order to ease administrative burden, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic.

Reorganizations and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to small businesses and impacted industries to implement COVID–19 mitigation and prevention strategies, see section COVID–19 Mitigation and Prevention in Public Health.

Small Businesses Eligible for Assistance

Public Comment: Treasury received many comments about the general benefits or drawbacks of use of SLFRF funds to provide assistance to small businesses. Some commenters suggested that SLFRF funds should be available to assist all small businesses, rather than only businesses that experienced direct negative economic impacts due to the public health emergency. Other commenters argued that aid to small businesses should be narrowed in the final rule, asserting that SLFRF funds should instead focus on assistance to households or building public sector capacity.

Treasury also received comments requesting clarification of the types of small businesses eligible for assistance. For example, some commenters requested clarification about whether microbusinesses were included in the definition of small business. Comments also suggested that self-employed individuals and Tribal enterprises be classified as small businesses, respectively. Commenters argued that these types of small businesses are more common among low-income and minority businessowners and serve as important institutions in underserved communities.

Finally, some commenters suggested that Treasury permit broader enumerated eligible uses to assist small businesses in disproportionately impacted communities and generally strengthen economic growth in these communities. These commenters recommended that Treasury presume small businesses operating in QCTs are disproportionately impacted and eligible for broader enumerated uses.

Treasury Response: As discussed in the section Designating a Negative Economic Impact, in the final rule, recipients must identify an economic harm caused or exacerbated by the pandemic on a small business or class of small businesses to provide services that respond.

As discussed above, programs or services in this category must respond to a harm experienced by a small business or class of small businesses as a result of the public health emergency. To identify impacted small businesses and necessary response measures, recipients may consider impacts such as lost revenue or increased costs, challenges covering payroll, rent or mortgage, or other operating costs, the capacity of a small business to weather financial hardships, and general financial insecurity resulting from the public health emergency.

Recognizing the difficulties faced by small businesses in certain communities, the final rule presumes that small businesses operating in QCTs, small businesses operated by Tribal governments or on Tribal Lands, and small businesses operating in the U.S. territories were disproportionately impacted by the pandemic. This presumption parallels the final rule's approach to assistance to households, reflecting the more severe pandemic impacts in underserved communities and creating a parallel structure across different categories of eligible uses to make the structure simpler for recipients to understand and navigate.

Treasury notes that recipients may also designate a class of small businesses that experienced a negative economic impact or disproportionate negative economic impact (*e.g.,* microbusinesses, small businesses in certain economic sectors), design an intervention to fit the impact, and

document that the individual entity is a member of the class. Additional information about this framework is included in the section General Provisions: Structure and Standards.

Further, Treasury is maintaining the interim final rule definition of ''small business,'' which used the Small Business Administration's (SBA) definition of fewer than 500 employees, or per the standard for that industry, as defined by SBA. This definition includes businesses with very few employees, self-employed individuals, and Tribally owned businesses.[220] Finally, Treasury notes that recipients may award SLFRF funds to many different types of organizations, including small businesses, to function as a subrecipient in carrying out eligible uses of funds on behalf of a recipient government. In this case, a small business need not have experienced a negative economic impact in order to serve as a subrecipient. See section Distinguishing Subrecipients versus Beneficiaries for more detailed discussion of interactions with subrecipients, in contrast to beneficiaries of assistance.

Enumerated Eligible Uses for Assistance to Small Businesses

Public Comment: Treasury received comments requesting clarification of the types of assistance available to small businesses. For example, one commenter suggested that outdoor dining be an eligible use for SLFRF funds as assistance to small businesses. Other commenters asked for clarification about how SLFRF funds could be used to support new businesses and start-ups.

Several commenters requested clarification of whether and how recipients may provide services to business districts or downtown areas, particularly those that exist in whole or in part within a QCT, and requested reduced documentation of the specific negative economic impact for the businesses operating within those areas. These commenters argued in favor of allowing redevelopment or other support, including capital investments, in business districts that were negatively impacted by COVID–19. Several commenters also argued that funds should be available to support and grow microbusinesses, or businesses with five or fewer employees, which are more likely to be owned by women and people of color.

Treasury Response: In the final rule, Treasury is maintaining and clarifying the enumerated eligible uses of funds for assistance to small businesses that are impacted or disproportionately impacted by the pandemic.

Impacted small businesses. Specifically, Treasury is maintaining enumerated eligible uses from the interim final rule for assistance to impacted small businesses. These include but are not limited to:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID–19 prevention or mitigation tactics (see section Public Health for details on these eligible uses); and
- Technical assistance, counseling, or other services to assist with business planning needs.

Treasury acknowledges a range of potential circumstances in which assisting small businesses could be responsive to the negative economic impacts of COVID–19, including for small businesses startups and microbusinesses and individuals seeking to start small or microbusinesses. For example:

- As noted above, a recipient could assist small business startups or microbusinesses with additional costs associated with COVID–19 mitigation tactics; see section Public Health for details on these eligible uses.
- A recipient could identify and respond to a negative economic impact of COVID–19 on new small business startups or microbusinesses; for example, if small business startups or microbusinesses in a locality faced greater difficulty accessing credit than prior to the pandemic or faced increased costs to starting the business due to the pandemic or if particular small businesses or microbusinesses had lost expected startup capital due to the pandemic.
- The interim final rule also discussed, and the final rule maintains, eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID–19 public health emergency, including uses that provide job training for unemployed individuals. These initiatives also may support small business start-ups, microbusinesses, and individuals seeking to start small or microbusinesses.

Disproportionately impacted small businesses. Additionally, Treasury agrees with commenters that disproportionately impacted small businesses may benefit from additional assistance to address the sources of that disparate impact.

As such, the final rule provides a broader set of enumerated eligible uses for disproportionately impacted small businesses and/or small businesses in disproportionately impacted business districts. Recipients may use SLFRF funds to assist these businesses with certain capital investments, such as rehabilitation of commercial properties, storefront improvements, and façade improvements. Recipients may also provide disproportionately impacted microbusinesses additional support to operate the business, including financial, childcare, and transportation supports.

Recipients could also provide technical assistance, business incubators, and grants for start-ups or expansion costs for disproportionately impacted small businesses. Note that some of these types of assistance are similar to those eligible to respond to small businesses that experienced a negative economic impact (''impacted'' small businesses). However, because the final rule presumes that some small businesses were disproportionately impacted, these enumerated eligible uses can be provided to those businesses without any specific assessment of whether they individually experienced negative economic impacts or disproportionate impacts due to the pandemic.

Cross-References: Recipients providing assistance to small businesses for capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that apply to capital expenditures. Recipients should also note that services to address vacant or abandoned commercial or industrial properties are addressed in section Vacant or Abandoned Properties in Assistance to Households.

Loans to Small Businesses

Public Comment: Treasury received many comments requesting clarification on using SLFRF funds to establish funds that provide loans to small businesses. For example, commenters sought clarification of how eligible use

[220] In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 CFR 121.103(b)(2). This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a ''small business concern'' relating to Tribal governments as well as how Tribal enterprises are defined for the State Small Business Credit Initiative (SSBCI).

requirements and applicable dates for SLFRF funds would apply to third party organizations (like economic development organizations) who receive SLFRF funds in order to establish a loan fund. In addition, commenters requested clarification on what requirements apply to loan programs with available funds remaining after December 31, 2024.

Treasury Response: SLFRF funds may be used to make loans, including to small businesses, provided that the loan is an eligible use, and the cost of the loan is tracked and reported in accordance with Treasury's Compliance and Reporting Guidance. Funds that are unobligated after December 31, 2024 must be returned to Treasury. See section Treatment of Loans for more information about using SLFRF funds for loan programs.

c. Assistance to Nonprofits

Background: Nonprofits have faced significant challenges because of the pandemic, including increased demand for services and changing operational needs.[221] Prior to the pandemic, the median U.S. nonprofit reported that it had six months of cash on hand.[222] This varied by sector, however, with some sectors like disaster relief organizations reporting a median of 17 months cash on hand, and others, like mental health and crisis intervention organizations reporting only three months.[223] Evidence suggests that the pandemic has damaged the financial health of nonprofits, with small nonprofits, which tend to rely more heavily on donations than large nonprofits, reporting relatively larger declines in donations — 42 percent versus 29 percent, respectively.[224] Among nonprofits that collect fees for services, the median revenue amount collected from such fees fell by 30 percent from 2019 to 2020, with arts organization experiencing a 50 percent decline.[225] Nonprofits also experienced significant job losses. While employment in the nonprofit sector has recovered from its low point in 2020, as of November 2021, the sector remained 485,000 jobs below its pre-pandemic level.[226] In addition, some nonprofits may have experienced declines in volunteer staffing during the pandemic.[227]

At the same time, nonprofits provide a host of services for their communities, including helping Americans weather the multitude of challenges presented by the pandemic. The ARPA and the interim final rule recognized this dichotomy—nonprofits as entities that have themselves been negatively impacted by the pandemic and as entities that provide services that respond to the public health and negative economic impacts of the pandemic on households and others —by creating two roles for nonprofits.

First, under Sections 602(c)(1)(A) and 603(c)(1)(A), recipients may ''respond to the public health emergency or its negative economic impacts,'' by, among other activities, providing ''assistance to . . . nonprofits.'' The interim final rule defined assistance to nonprofits to include ''loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID–19 public health emergency,'' and ''nonprofit'' to mean a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code.[228]

Second, as discussed above, ARPA and the interim final rule provided that nonprofit organizations may also receive funds as subrecipients of a recipient government (*i.e.,* a government that received SLFRF funds); subrecipients carry out an eligible use of SLFRF funds on behalf of a recipient government (*e.g.,* a recipient government that would like to provide food assistance to impacted households may grant funds to a nonprofit organization to carry out that eligible use). Recipients generally have wide latitude to award funds to many types of organizations, including nonprofit or for-profit organizations, as subrecipients to carry out eligible uses of funds on their behalf. For further information on distinguishing between beneficiaries and subrecipients, as well as the impacts of the distinction on reporting and other requirements, see section Transfers of Funds and section Distinguishing Subrecipients versus Beneficiaries under the Public Health and Negative Economic Impacts eligible use category.[229]

Reorganization and Cross-References: Under the interim final rule, assistance to disproportionately impacted communities was a separate, stand-alone category. The final rule reorganizes the disproportionate impact analysis within the sections Assistance to Households, Assistance to Small Business, and Assistance to Nonprofits to better articulate how recipients can serve disproportionately impacted beneficiaries in each of those categories.

As detailed above in the Public Health subsection, in response to public comments describing uncertainty on which eligible use category should be used to assess different potential uses of funds, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. For discussion of assistance to nonprofits to implement COVID–19 mitigation and prevention strategies, see section COVID–19 Mitigation and Prevention in Public Health.

Recipients providing assistance via nonprofits involving capital expenditures (*i.e.,* expenditures on property, facilities, or equipment) should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards for these expenditures. Recipients providing assistances in the form of loans should review the section Treatment of Loans.

Public Comment: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: A few commenters asked Treasury to be more explicit in the final rule that recipients may use funds to provide relief directly to nonprofit organizations and to explain how nonprofits might qualify themselves for assistance and what expenses SLFRF funds may be used to cover.[230] Commenters requested that Treasury note that the pandemic is

[221] *See, e.g.,* Federal Reserve Bank of San Francisco, Impacts of COVID–19 on Nonprofits in the Western United States (May 2020), *https://www.frbsf.org/community-development/files/impact-of-covid.*

[222] Philanthropy and COVID–19: Measuring one year of giving, Candid and the Center for Disaster Philanthropy. (2021), *https://www.issuelab.org/resources/38039/38039.pdf.*

[223] *Id.*

[224] Elizabeth T. Boris et al., Nonprofit Trends and Impacts 2021, Urban Institute (October 7, 2021), *https://www.urban.org/research/publication/nonprofit-trends-and-impacts-2021/view/full_report.*

[225] *Id.*

[226] Chelsea Newhouse, COVID–19 JOBS UPDATE, NOVEMBER 2021: Nonprofits add just 5,000 jobs in November, Center for Civil Society Studies at Johns Hopkins University (December 10, 2021), *http://ccss.jhu.edu/november-2021-jobs/.*

[227] Elizabeth T. Boris et al. *supra* note 224 at p. 38.

[228] § 35.3 Definitions.

[229] The ARPA also states under ''Transfer Authority'' that a Recipient may transfer funds to a private nonprofit organization such as those defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17). *See* 602 & 603(c)(3) of the Social Security Act. *See* section Transfers of Funds for additional information on other types of entities, including other forms of nonprofits, that may receive transfers.

[230] While not stated specifically in the interim final rule, the Department does not require or have a preference as to the payment structure for recipients that transfer funds to subrecipients (*e.g.,* advance payments, reimbursement basis, etc.). Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

leading to a changing financial landscape for nonprofits.

Treasury Response: Eligible Assistance to Impacted and Disproportionately Impacted Nonprofits: The interim final rule provided for, and the final rule maintains, the ability for recipients to provide direct assistance to nonprofits that experienced public health or negative economic impacts of the pandemic. Specifically, recipients may provide direct assistance to nonprofits if the nonprofit has experienced a public health or negative economic impact as a result of the pandemic. For example, if a nonprofit organization experienced impacts like decreased revenues or increased costs (*e.g.,* through reduced contributions or uncompensated increases in service need), and a recipient provides funds to address that impact, then it is providing direct assistance to the nonprofit as a beneficiary under Subsection (c)(1) of Sections 602 and 603. Direct assistance may take the form of loans, grants, in-kind assistance, technical assistance, or other services that respond to the negative economic impacts of the COVID–19 public health emergency.

A recipient may identify a negative economic impact experienced by a nonprofit, or class of nonprofits, and design and implement a response to that negative economic impact, see section Standards: Designating a Negative Economic Impact. The final rule provides a non-exhaustive list of enumerated eligible uses for assistance to nonprofits that are impacted or disproportionately impacted by the pandemic.

A recipient may also identify a class of nonprofits that have been disproportionately impacted by the public health emergency and design and implement a program that responds to the source of that disproportionate impact. For example, a recipient may determine that nonprofits offering after-school programs within its jurisdiction were disproportionately impacted by the pandemic due to the previous in-person, indoors nature of the work and the nonprofits' reliance on fees received for services (*e.g.,* attendance fees). The recipient might then design an intervention to assist those nonprofits in adapting their programming (*e.g.,* to outdoor or online venues), their revenue structure (*e.g.,* adapting the fee for service structure or developing expertise in digital donation campaigns), or both. Additional information about this framework is included in General Provisions: Structure and Standards. In order to ease administrative burden, the final rule presumes that nonprofits operating in QCTs, operated by Tribal governments or on Tribal Lands, or operating in the U.S. territories were disproportionately impacted by the pandemic.

To summarize, a recipient may determine that certain nonprofits were impacted by the pandemic or were disproportionately impacted by the pandemic and provide responsive services.

Public Comment: Beneficiaries and Subrecipients: As noted elsewhere in this final rule, Treasury received multiple comments expressing uncertainty on how to categorize a particular activity in the eligible use categories. For instance, some commenters requested that recipients be able to use SLFRF funds for certain expenses incurred by nonprofits (*e.g.,* unemployment charges) as a response to a public health or negative economic impact to that nonprofit; others asked if nonprofits providing certain services (*e.g.,* social services) made them eligible for direct assistance. Commenters also requested that Treasury acknowledge that engagement directly with nonprofit organizations in low-income communities and communities of color may allow the recipient to better assess economic harms in these areas.

Treasury Response: Beneficiaries and Subrecipients: Treasury recognizes that many nonprofits play important roles in their communities, and some may have experienced public health or negative economic impacts during the pandemic. As such, under the interim final rule and the final rule, nonprofits may be impacted by the pandemic and receive assistance as a beneficiary, as described above, and/or be a subrecipient providing services on behalf of a recipient.[231]

Specifically, the interim final rule also allowed for, and the final rule maintains, the ability for the recipient to transfer, *e.g.,* via grant or contract, funds to nonprofit entities to carry out an eligible use on behalf of the recipient. Treasury notes that recipients may award SLFRF funds to many different types of organizations to carry out eligible uses of funds and serve beneficiaries on behalf of a recipient government (*e.g.,* assisting in a vaccination campaign, operating a job training program, developing affordable housing). When a recipient provides funds to an organization to carry out eligible uses of funds and serve beneficiaries, the organization becomes a subrecipient. In this case, a nonprofit need not have experienced a negative economic impact in order to serve as a subrecipient.

In the context of SLFRF, nonprofits of all types may be subrecipients. Treasury is not restricting the types of nonprofits that can operate as subrecipients, rather allowing recipients to decide what form best meets the needs of their community. Therefore, a ''nonprofit'' that is acting as subrecipient could include, but is not limited to, a nonprofit as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance.[232] See section Distinguishing Subrecipients versus Beneficiaries for further information. Additional guidance on determining subrecipient status may be found in the Uniform Guidance.[233]

Recipients may transfer funds to subrecipients in several ways, including advance payments and on a reimbursement basis. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients or beneficiaries.

As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this requirement, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in providing assistance to nonprofits or making subrecipient awards by, *inter alia,* making aid available to nonprofits on generally applicable terms or utilizing a competitive grant process, respectively. A recipient may not use control over SLFRF funds for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

Public Comment: Definition of Nonprofit: Treasury also received several requests to expand the definition of nonprofits so that other tax-exempt entities (*e.g.,* 501(c)(7)s, 501(c)(9)s, 501(c)(19)s, nonprofits with ''historical

[231] Note, this response is meant to clarify the difference between nonprofits as beneficiaries and nonprofits as subrecipients. It is not meant to limit the types of relationships that a recipient may enter into with a nonprofit as permitted under the Uniform Guidance.

[232] *See* sections 602(c)(3) and 603(c)(3) of the Social Security Act. *See also* Section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17), which defines a ''private nonprofit organization.''

significance'') could be eligible for direct assistance as beneficiaries.

Treasury Response: Definition of Nonprofit: The final rule expands the definition of nonprofits to mean 501(c)(3) organizations and 501(c)(19) organizations.[234] The 501(c)(3) classification includes a wide range of organizations with varying charitable or public service-oriented goals (*e.g.,* housing, food assistance, job training). As discussed above, these nonprofit organizations often experienced hardship due to increased needs for services combined with decreased donations and other sources of funding. In response to comments, Treasury has expanded the definition of nonprofit to include 501(c)(19) organizations, which includes veterans' organizations, to provide recipients more flexibility and in alignment with the definition of nonprofit adopted by the CARES Act, wherein 501(c)(3)s and 501(c)(19)s were eligible for assistance.[235]

Public Comment: Reporting Requirements: One commenter asked Treasury to clarify if nonprofits that receive direct assistance as beneficiaries are required to comply with guidelines and reporting requirements.

Treasury Response: Reporting Requirements: Nonprofits that receive direct assistance as beneficiaries are not subrecipients under SLFRF and are therefore not required to comply with SLFRF reporting requirements. However, the recipient must comply with SLFRF reporting requirements, which would require reporting obligations and expenditures for assistance to nonprofits. The recipient may also choose to establish other forms of reporting or accountability as a part of the recipient's direct assistance program.

A nonprofit entity that receives a transfer from a recipient is a subrecipient. Per the Uniform Guidance, subrecipients must adhere to the same requirements as recipients. Therefore, a nonprofit subrecipient may only receive funds to carry out an eligible use of SLFRF funds and must comply with any reporting and compliance requirements. Note that recipients are ultimately responsible for reporting information to Treasury and must collect any necessary information from their subrecipients to complete required reporting.

d. Aid to Impacted Industries

The interim final rule allowed for ''aid to tourism, travel, and hospitality, and other impacted industries'' that responds to the negative economic impacts of the COVID–19 public health emergency. In designating other impacted industries, Treasury specified that recipients should consider the ''extent of the economic impact as compared to tourism, travel, and hospitality'' and ''whether impacts were due to the COVID–19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.''[236] Treasury identified declines in employment and revenue as possible metrics to compare the economic impact on a particular industry relative to the tourism, travel, and hospitality industries.

Treasury further provided that aid should be limited to businesses, attractions, business districts, and Tribal development districts[237] that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Examples of eligible aid include assistance to implement COVID–19 mitigation and infection prevention measures, aid to support safe reopening of businesses in these industries, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic. The interim final rule and Treasury's subsequent Compliance and Reporting Guidance also required governments to publicly report assistance provided to private-sector businesses under this eligible use and maintain records of their assessments to facilitate transparency and accountability.

Reorganization and Cross-References: As detailed above, Treasury has re-categorized some uses of funds in the final rule to provide greater clarity. In the interim final rule, aid to impacted industries to implement COVID–19 mitigation and prevention strategies was categorized under Aid to Impacted Industries; the final rule addresses these items under the section COVID–19 Mitigation and Prevention in Public Health. Recipients should also be aware of the difference between beneficiaries of assistance and subrecipients when working with impacted industries; for further information, see section Distinguishing Subrecipients versus Beneficiaries.

Designating an Impacted Industry

Public Comment: Many commenters requested greater clarity on how to designate ''other impacted industries'' within their jurisdiction. Commenters requested greater specificity as to the metrics used to measure impact, with some suggesting metrics such as the change in the size of an industry's workforce due to the pandemic, as well as consideration of whether and why employees are choosing to return to work at slower rates in certain industries. One commenter asked if this meant nearly every industry was ''disproportionately impacted.'' Some commenters encouraged Treasury to focus on industries most negatively impacted by the pandemic, including disallowing across-the-board business subsidies to businesses that were not negatively impacted by the pandemic and saw revenue or profit growth. Other commenters asked for flexibility for recipients to determine impacted industries based on their local knowledge of the economic landscape.

Treasury Response: The final rule maintains the interim final rule's approach of allowing recipients to designate impacted industries outside the travel, tourism, and hospitality industries, and, in response to comments, provides greater clarity as to how recipients may designate such impacted industries.

Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that the tourism, travel, and hospitality industries are severely negatively impacted by the pandemic. Under the final rule, recipients may provide eligible aid (described in further detail herein) to the tourism, travel, and hospitality industries. Treasury considers Tribal development districts, which are commercial centers for Tribal hospitality, gaming, tourism, and entertainment and can include Tribal enterprises, as part of the tourism, travel, and hospitality industries that have been severely hit by the pandemic. Therefore, Treasury reaffirms that Tribal development districts are considered impacted industries and recipients may provide eligible aid to them.

To identify other industries comparably impacted to the tourism, travel, and hospitality industries, recipients should undertake a two-step process: Identifying an industry and determining whether that industry is comparably impacted.

[234] § 35.3 Definitions.

[235] Treasury considered expanding the definition of nonprofit to include 501(c)(6) organizations, as Congress later did in the Coronavirus Response and Consolidated Appropriations Act of 2021, but ultimately decided to retain the original CARES Act definition. To the extent impacted by the pandemic, 501(c)(6) organizations may be eligible to receive funds to support eligible uses that align with their overall purpose (*e.g.,* tourism promotion in aid of an impacted industry).

[236] Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26795.

[237] For a definition of ''Tribal development districts,'' please see FAQ 2.9 at the following: Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

First, recipients should identify an industry to be assessed. In identifying this industry, the final rule provides recipients the flexibility to define its substantive or geographic scope.[238] Recipients may identify a broad sector that encompasses a number of sub-industries, or they may identify a specific sub-industry to be assessed. For example, a recipient may identify ''personal care services'' as an industry, or they may identify a more specific category within the ''personal care services'' industry (*e.g.,* barber shops) as an industry. In defining the industry, Treasury encourages recipients to define narrow and discrete industries eligible for aid. Recipients are not required to follow, but may consider following, industry classifications under the North American Industry Classification System (NAICS). Treasury notes that the larger and more diverse the sector, the more difficult it may be to demonstrate that the larger and less specific sector is negatively impacted in the same way given the scale and diversity of businesses within it.

State or territory recipients may also define a constituent industry with greater geographic precision than state or territory-wide. For example, a state may identify a particular industry in a certain region of the state that was negatively impacted by the pandemic, even if the same industry in the rest of the state did not see a meaningful negative economic impact from the pandemic. State recipients oversee large and diverse industries, sometimes with differences in economic activity between geographic regions. Allowing greater geographic precision allows recipients to target aid to those that need it most, ensuring that state averages do not conceal hard-hit areas in their state.

Second, to determine whether the industry is ''impacted,'' recipients should compare the negative economic impacts of the public health emergency on the identified industry to the impacts observed on the travel, tourism, and hospitality industries.

1. *Simplified test.* An industry is presumed to be impacted if the industry experienced employment loss of at least 8 percent.

Specifically, a recipient should compare the percent change in the number of employees of the recipient's identified industry and the national Leisure & Hospitality sector in the three months before the pandemic's most severe impacts began (a straight three-month average of seasonally-adjusted employment data from December 2019, January 2020, and February 2020) with the latest data as of the final rule release (a straight three-month average of seasonally-adjusted employment data from September 2021, October 2021, and November 2021).[239] The national Leisure & Hospitality sector largely represents the national travel, tourism, and hospitality industries enumerated in the statute. According to the Bureau of Labor Statistics, employment has fallen by approximately 8 percent for the national Leisure & Hospitality sector when comparing the most recent three-month period available as of the date of adoption of the final rule to the three-month period immediately before the public health emergency. Therefore, if the identified industry has suffered an employment loss of at least 8 percent, the final rule presumes the industry to be an ''impacted industry.''

For parity and simplicity, smaller recipients without employment data that measure industries in their specific jurisdiction may use data available for a broader unit of government for this calculation (*e.g.,* a county may use data from the state in which it is located; a city may use data for the county, if available, or state in which it is located) solely for purposes of determining whether a particular industry is an impacted industry.

2. *If simplified test is not met.* If an industry does not satisfy the test above or data are unavailable, the recipient may still designate the industry as impacted by demonstrating the following:

a. The recipient can show that the totality of relevant major economic indicators demonstrate that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries at the time of the publication of the final rule, and that the impacts were generally due to the COVID–19 public health emergency. Example economic indicators include gross output, GDP, net profits, employment levels, and projected time to restore employment back to pre-pandemic levels. Recipients may rely on available economic data, government research publications, research from academic sources, and other quantitative sources for this determination.

If quantitative data is unavailable, the recipient can rely on qualitative data to show that the industry is experiencing comparable or worse economic impacts as the national tourism, travel, and hospitality industries, and the impacts were generally due to the COVID–19 public health emergency. Recipients may rely on sources like community interviews, surveys, and research from relevant state and local government agencies.

As the public health emergency and economic recovery evolves, recipients should assess how industry impacts shift over time. Impacted industries may recover in a short period of time and no longer face a negative economic impact; in those circumstances, the recipient should ensure that the extent and length of aid is reasonably proportional to the negative economic impact that is experienced, as detailed further below and in section General Provisions: Structure and Standards. Recipients may add to their list of impacted industries by showing that the negative economic impacts to the industry at the time of the designation are comparable to the negative economic impacts to the national tourism, travel, and hospitality sectors as of the date of the final rule adoption, as detailed herein.

Eligible Aid

Public Comment: Commenters asked for further clarification as to the definition of eligible aid to an impacted industry, with many requesting that a broad range of aid be eligible. Examples of aid that recipients asked to be considered eligible include aid to businesses to cover COVID–19 mitigation costs and planned renovations or improvements to tourism, travel, and hospitality facilities, as well as marketing and in-kind incentives to attract visitors. Commenters also asked about the eligibility of aid to broadly cover losses incurred by facilities such as convention centers and hotels due to the pandemic's economic impact. Commenters also asked for further clarification about the requirements related to private-sector reporting. Further, some commenters asked for clarification about eligible aid to impacted industries owned and operated by Tribal governments, including for Tribal construction projects that have been delayed due to the pandemic's economic impacts, and for deference to Tribal determinations of negative economic impacts.

[238] Once an industry is designated as impacted, aid should be generally broadly available to businesses in the industry that qualify. Recipients should document how they defined the scope of their industry and how they determined that the industry was impacted. For states and territories, this includes documenting their justification for defining a constituent industry with greater geographic precision than state or territory-wide.

[239] National Leisure & Hospitality supersector employment data can be found on the U.S. Bureau of Labor Statistics website: U.S. Bureau of Labor Statistics, Leisure and Hospitality, *https://www.bls.gov/iag/tgs/iag70.htm* (last visited December 7, 2021).

Treasury Response: In response to commenters' requests for clarification on eligible aid, the final rule requires that aid to impacted industries, including to Tribal development districts, be designed to address the harm experienced by the impacted industry.

First, recipients should identify a negative economic impact, *i.e.,* an economic harm, that is experienced by businesses in the impacted industry. Second, recipients should select a response that is designed to address the identified economic harm resulting from or exacerbated by the public health emergency. Responses must also be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Recipients should consider the further discussion of this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact.

These responses may take the form of direct spending by recipients to promote an industry or support for businesses within an ''impacted'' industry that experienced a negative economic impact (*e.g.,* through a grant program). Examples of eligible responses include:

- Aid to mitigate financial hardship due to declines in revenue or profits by supporting payroll costs and compensation of returning employees for lost pay and benefits during the COVID–19 pandemic, as well as support of operations and maintenance of existing equipment and facilities, such as rent, leases, and utilities;
- Aid for technical assistance, counseling, and other services to assist with business planning needs; and
- Aid to implement COVID–19 mitigation and infection prevention measures, such as vaccination or testing programs, is broadly eligible for many types of entities, including travel, tourism, hospitality, and other impacted industries. Recipients providing aid to impacted industries for COVID–19 public health measures should review the section Assistance to Businesses to Implement COVID–19 Strategies in Public Health, which describes types of eligible uses of funds in this category.

To address the identified harms, responses (*e.g.,* aid through a grant program) should be generally broadly available to all businesses within the impacted industry to avoid the risk of self-dealing, preferential treatment, and conflicts of interest.[240] Treasury encourages recipients to design aid programs such that funds are first used for operational expenses that are generally recognized as ordinary and necessary for the recipient's operation, such as payroll, before being used on other types of costs. As noted in the section General Standards: Structure and Standards, uses of funds that do not respond to the negative economic impacts of the pandemic, such as excessive compensation to employees, is ineligible.

The final rule maintains the interim final rule's requirement that aid may only be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, and Tribal development districts operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Further, to facilitate transparency and accountability, the final rule maintains the interim final rule's requirement that recipients publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative economic impacts of the public health emergency. Recipients also should maintain records to support their assessment of how businesses receiving assistance were affected by the negative economic impacts of the public health emergency and how the aid provided responds to these impacts.

Recipients providing aid to impacted industries for capital expenditures (*i.e.,* expenditures on property, facilities, or equipment), including Tribal governments providing aid to Tribal development districts, should also review the section Capital Expenditures in General Provisions: Other, which describes eligibility standards that are applicable to these expenditures, depending on the type of aid. Recipients providing assistance in the form of loans should review the section Treatment of Loans in Program Administration Provisions.

4. General Provisions: Other

As noted above, the final rule consolidates into a General Provisions section several types of uses of funds; in the interim final rule, the eligibility of these uses of funds was discussed within specific categories of eligible uses for public health and negative economic impacts. Treasury anticipates that this re-organization will enhance recipient clarity in assessing eligible uses of funds. These General Provisions apply across all uses of funds under public health and negative economic impacts.

Specifically, this section considers eligible uses for:

- *Public Sector Capacity and Workforce,* which includes several separate and non-mutually exclusive categories articulated in the interim final rule: public health and safety staff; rehiring state, local, and Tribal government staff; expenses for administering COVID–19 response programs; expenses to improve the efficacy of public health or economic relief programs; and administrative expenses caused or exacerbated by the pandemic. Treasury recognizes that these are closely related and frequently overlapping categories. The final rule treats them as a single purpose, supporting public sector capacity, and provides coordinated guidance on the standards and presumptions that apply to them.
- *Capital Expenditures,* which was addressed only under Public Health in the interim final rule. The final rule moves this expense to General Provisions and provides more clarity on the eligibility of capital expenditures across all aspects of the public health and negative economic impacts eligible use category.
- *Distinguishing Subrecipients versus Beneficiaries,* which describes the differences between these two categories. Recipient governments responding to the public health and negative economic impacts of the pandemic may provide assistance to beneficiaries or execute an eligible use of funds through a subrecipient; some types of entities (*e.g.,* nonprofits) could fit into either category depending on the specific purpose of the use of funds.
- *Uses Outside the Scope of this Category,* which addresses uses of funds that are ineligible or generally ineligible under this eligible use category in the interim final rule. These uses of funds remain ineligible under the final rule, but Treasury has re-categorized where they are addressed, as described below.

[240] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Recipients may avoid conflicts of interest in awarding aid to impacted industries by, inter alia, making aid available to businesses in the industry on generally applicable terms or utilizing a competitive grant process. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

This section also addresses enumerated eligible uses proposed by commenters that Treasury has not incorporated into the final rule.

Recipients should also note that the Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called the ''Uniform Guidance'') generally applies to SLFRF.

a. Public Sector Capacity and Workforce

Public Safety, Public Health, and Human Services Staff

Summary of Interim Final Rule: Under the interim final rule, funds may be used for payroll and covered benefits [241] for *public safety, public health, health care, human services, and similar employees* [242] of a recipient government, for the portion of the employee's time that is spent responding to COVID–19. For administrative convenience, the recipient may consider *public health and safety* employees to be entirely devoted to responding to COVID–19, and therefore their full payroll and covered benefits eligible to be covered, if the employee, or his or her operating unit or division, is ''primarily dedicated'' to responding to COVID–19, meaning that more than half of the employee, unit, or division's time is dedicated to responding to COVID–19. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is responding to COVID–19. Recipients must periodically reassess their determination and maintain records to support their assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence; recipients need not track staff hours. The interim final rule also posed a question on how long recipients should be able to use funds for staff responding to COVID–19 and what other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID–19 response in an easily administrable manner.

Treasury also provided further guidance on the types of employees covered by this category of eligible use, specifically: ''Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees [243] would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (*e.g.,* laboratory technicians, medical examiner, or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others.''

Public Comment: Measuring Time Spent on COVID–19 Response: Treasury received public comments on several components of this eligible use category. Many commenters argued that it poses an administrative burden to identify the extent to which staff are responding to COVID–19 and to maintain records to support that assessment. Largely citing administrative burden in assessing eligibility, several commenters recommended revisions to the administrative convenience that the full payroll and covered benefits for public health and safety staff ''primarily dedicated'' to responding to COVID–19 may be paid with SLFRF funds. Some commenters recommended presuming that all public health and safety staff are primarily dedicated to COVID–19 response, while others proposed that public health and safety workers who primarily serve QCTs or low- and moderate-income areas be presumed to be primarily dedicated to COVID–19 response, given the disproportionate impacts of the pandemic in those communities. Similarly, Tribal communities recommended that their public health staff be presumed eligible due to the disproportionate impact of the pandemic on their communities. Some commenters proposed that they be able to use the administrative convenience for staff outside of public health and safety that are responding to COVID–19 (*i.e.,* to be able to pay the full payroll and covered benefits for any staff ''primarily dedicated'' to COVID–19 response).

Treasury Response: In the final rule, Treasury is maintaining the approach in the interim final rule, including elaborations issued in further guidance, but providing additional clarification on its application, including methods to apply the approach to minimize administrative burden. Treasury notes that recipients may assess the extent to which staff are dedicated to responding to COVID–19 through a variety of means, including establishing presumptions or assessing public health and safety staff at the division or operating unit level. For example, a recipient could consider the amount of time spent by employees in its public health department's epidemiology division in responding to COVID–19 and, if a majority of its employees are dedicated to responding to COVID–19, determine that the entire division is primarily dedicated to responding to COVID–19. Treasury also clarifies that recipients may use reasonable estimates to establish administrable presumptions; for example, a recipient could estimate, based on discussions with staff, the general share of time that employees in a specific role or type of position spend on COVID–19 related tasks and apply that share of time to all employees in that position.

Recipients are generally required to be able to support uses of SLFRF funds as eligible, including, in this instance, maintenance of records to support an assessment that public health and safety staff are primarily dedicated to responding to COVID–19. As noted above, recipients may use reasonable estimates to implement this provision. Recipients should maintain records on how they developed these estimates and need not track staff hours. Treasury notes that records retained can include payroll records (*e.g.,* the number and type of staff in various positions), attestations from supervisors or staff (*e.g.,* self-attestation of share of time spent on COVID–19), or regular work product or correspondence (*e.g.,* calendars, email correspondence, documents, and other electronic

[241] In general, if an employee's wages and salaries are an eligible use of SLFRF funds, recipients may treat the employee's covered benefits as an eligible use of SLFRF funds. For purposes of SLFRF funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes). As described further in the section Deposits into Pension Funds in Restrictions on Use, that limitation on use does not apply to pension contributions that are part of regular payroll contributions for employees whose wages and salaries are an eligible use of SLFRF funds.

[242] Note that the interim final rule adapted prior guidance issued for CRF that described these four categories of employees; however, when listing the specific occupations or types of employees in each of these categories, the guidance collapses health care and public health into one category titled ''public health.'' Therefore, the presumption described around public health employees also covers health care employees.

[243] Note that this category encompasses both public health and health care employees; both are treated as public health employees for the purposes of this eligible use category.

records). Treasury anticipates that these types of records are generally retained in many government settings; recipients should also consult the Award Terms and Conditions for SLFRF funds for requirements on length of record retention. For example, a recipient could establish a reasonable presumption about the share of time that an employee, division, or operating unit is responding to COVID–19 and simply retain those employees' electronic records as a record to support their assessment.

Public Comment: Public Health and Safety Staff Primarily Dedicated to COVID–19 Response: Some commenters recommended expanding the administrative convenience for public health and safety staff primarily dedicated to COVID–19 response to further types of staff, to all public health and safety staff, or to public health and safety staff serving underserved areas.

Treasury Response: The interim final rule recognized that COVID–19 response continues to require substantial staff resources and provides an administrative convenience to make it relatively simpler to identify the eligibility of the types of workers—public health and safety workers—generally most involved in COVID–19 response. At the same time, many public health and safety workers perform roles unrelated to COVID–19; coverage of all roles would be overbroad compared to the workers responding to COVID–19 in actuality. For this reason, the final rule maintains the interim final rule's approach to permitting SLFRF funds to be used for public health and safety staff primarily dedicated to responding to COVID–19. Finally, to the extent that a greater proportion of public health and safety staff time is needed to respond to COVID–19 in disproportionately impacted communities, the ''primarily dedicated'' approach recognizes this increased need.

Public Comment: Eligible Types of COVID–19 Response: Some public commenters also sought further clarification on how to identify eligible types of ''COVID–19 response.'' For example, commenters requested clarification on delineating COVID–19 response from general public health response and defining COVID–19 response for public safety employees.

Treasury Response: Treasury is clarifying that ''responding to'' COVID–19 entails work needed to respond to the public health or negative economic impacts of the pandemic, apart from the typical pre-pandemic job duties or workload of an employee in a comparable role, if one existed. For example, responding to COVID–19 for a public safety worker may entail working in an emergency operations center to coordinate pandemic-related supply distribution, responding to an increased volume of 911 calls, or implementing COVID–19 prevention and mitigation protocols in a carceral setting.

Public Comment: Eligible Employees: Some commenters requested clarification on the types of eligible employees or expansion of eligible employees to include additional types of staff, including in behavioral health; administrative, management, or financial management positions; social services; morgue staff; and nonprofit staff supporting projects to undertake eligible uses of funds under SLFRF.

Treasury Response: Treasury provided further guidance on eligible types of employees following the interim final rule, which expressly included social services and morgue staff, and incorporates that guidance into the final rule. In addition, Treasury is clarifying that public health ''employees involved in providing medical and other health services to patients and supervisory personnel'' includes behavioral health services as well as physical health services.

Treasury also is clarifying that this provision only addresses employees of the recipient government responding to COVID–19. For discussion of eligible expenses to administer SLFRF, including eligible costs for subrecipients performing eligible activities on behalf of a recipient government, see section Administrative Expenses in Program Administration Provisions.

Finally, Treasury is clarifying that indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID–19 are not permissible under this provision, given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs.

Public Comment: Time Period: Finally, some commenters made recommendations on the time period during which this eligible use should be available. Some commenters recommended eligibility begin before March 3, 2021, the period when Treasury's interim final rule permitted recipients to begin to incur costs using SLFRF funds; for discussion of this topic, see section Timeline for Use of SLFRF Funds in Program Administration Provisions. As noted above, Treasury also posed a question in the interim final rule asking for how long Treasury should maintain the administrative convenience that SLFRF funds may be used for the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID–19 response. Several commenters recommended that Treasury maintain this approach throughout the program or through December 31, 2024. Other commenters requested clarification on whether eligibility for this use of funds was tied to the length of the state of emergency or whether a jurisdiction has an active state of emergency.

Treasury Response: In the final rule, Treasury is clarifying that recipients will be permitted to fund the full payroll and covered benefits of public health and safety staff primarily dedicated to COVID–19 response throughout the period of performance for the SLFRF program, though recipients should periodically reassess their determination of primarily dedicated staff, including as the public health emergency and response evolves.

Government Employment and Rehiring Public Sector Staff

The interim final rule permitted use of funds for costs associated with rehiring state, local, and Tribal government staff in order to bolster the government's ability to effectively administer services. Specifically, recipients may pay for payroll, covered benefits, and other costs associated with the recipient increasing the number of its employees up to the pre-pandemic baseline, or the number of employees that the recipient government employed on January 27, 2020.

Public Comment: Many commenters requested greater flexibility and additional clarification on the provision's requirements, including the pre-pandemic baseline and re-hiring process. Some commenters requested that the final rule allow for hiring above the pre-pandemic baseline given historic underinvestment in the public sector workforce. Commenters suggested a number of adjustments to the pre-pandemic baseline, including adjusting based on population or revenue growth, while some recommended allowing recipients to set their own hiring levels. Others requested clarification on the definition of the baseline and the re-hiring process, including whether the pre-pandemic baseline referred to budgeted or filled positions and whether new hires had to fill the same roles as the previous hires. Commenters also asked whether recipients need to show if the reduction in number of employees was due to the pandemic in order to qualify for funding and requested that workers dedicated to

COVID–19 response be exempted from the calculation of number of employees.

Many commenters also requested an expanded set of eligible uses beyond restoring their workforce up to the pre-pandemic baseline. Commenters requested that funding be able to be used to avoid layoffs, provide back pay, retain employees through pay increases and other retention programs, or reimburse salaries and benefits already paid. Some commenters also requested clarification as to whether recipients can fund re-hired positions through the period of performance and on the definition of payroll and benefits. Other commenters requested preferential hiring for workers laid off, a strong commitment to equity, and a requirement that funds would not be used to pay for contract or temporary replacement workers during a labor dispute.

Treasury Response: The final rule allows for an expanded set of eligible uses to restore and support public sector employment. Eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector, providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Restoring pre-pandemic employment. In response to comments and recognizing underinvestment in public sector employment, the final rule expands the ability to use SLFRF funds to restore pre-pandemic employment. Treasury is also clarifying how, and the extent to which, recipients may use SLFRF funds to rehire public employees.

The final rule provides two options to restore pre-pandemic employment, depending on recipient's needs. Under the first and simpler option, recipients may use SLFRF funds to rehire staff for pre-pandemic positions that were unfilled or were eliminated due the pandemic without undergoing further analysis. Under the second option, the final rule provides recipients an option to hire above the pre-pandemic baseline, by adjusting the pre-pandemic baseline for historical growth in public sector employment over time, as well as flexibility on roles for hire. Recipients may choose between these options but cannot use both.

To pursue the first option, recipients may use SLFRF funds to hire employees for the same positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021, without undergoing further analysis. For these employees, recipients may use SLFRF funds for payroll and covered benefit costs that are obligated by December 31, 2024 and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. This option provides administrative simplicity for recipients that would simply like to restore pre-pandemic positions and would not like to hire above the pre-pandemic baseline.

To pursue the second option, recipients should undergo the analysis provided below. In short, this option allows recipients to pay for payroll and covered benefits associated with the recipient increasing its number of budgeted full-time equivalent employees (FTEs) up to 7.5 percent above its pre-pandemic employment baseline, which adjusts for the continued underinvestment in state and local governments since the Great Recession. State and local government employment as a share of population in 2019 remained considerably below its share prior to the Great Recession in 2007, which presented major risks to recipients mounting a response to the COVID–19 public health emergency. The *adjustment factor* of 7.5 percent results from estimating how much larger 2019 state and local government employment would have needed to be for the share of state and local government employment to population in 2019 to have been back at its 2007 level and is intended to correct for this gap.

Recipients should complete the steps described below. Recipients may choose whether to conduct this analysis on a government-wide basis or for an individual department, agency, or authority.

- *Step One:* Identify the recipient's budgeted FTE level on January 27, 2020. This includes all budgeted positions, filled and unfilled. This is called the *pre-pandemic baseline.*
- *Step Two:* Multiply the *pre-pandemic baseline* by 1.075 (that is, 1 + *adjustment factor*). This is called the *adjusted pre-pandemic baseline.*
- *Step Three:* Identify the recipient's budgeted FTE level on March 3, 2021, which is the beginning of the period of performance for SLFRF funds. Recipients may, but are not required to, exclude FTEs dedicated to responding to the COVID–19 public health emergency.[244] This is called the *actual number of FTEs.*
- *Step Four:* Subtract the *actual number of FTEs* from the *adjusted pre-pandemic baseline* to calculate the number of FTEs that can be hired and covered by SLFRF funds.

Recipients may use SLFRF funds to cover payroll and covered benefit costs obligated by December 31, 2024, and expended by December 31, 2026, up to the number of FTEs calculated in Step Four, consistent with the Uniform Guidance's Cost Principles at 2 CFR part 200 Subpart E. Recipients may only use SLFRF funds for additional FTEs hired over the March 3, 2021 level of budgeted FTEs (*i.e.,* the *actual number of FTEs*); note again that recipients may choose whether to conduct the analysis of FTEs that can be covered by SLFRF funds on a government-wide basis or for an individual department, agency, or authority.

These FTEs must have begun their employment on or after March 3, 2021, which is the beginning of the period of performance. For administrative convenience, recipients do not need to demonstrate that the reduction in number of FTEs was due to the COVID–19 pandemic, as Treasury assumes the vast majority of employment reductions during this time were due to pandemic fiscal pressures on state and local budgets. Recipients do not need to hire for the same roles that existed pre-pandemic.

For illustration, consider a hypothetical recipient with 1,000 budgeted FTEs on January 27, 2020 (950 filled FTE positions and 50 unfilled FTE positions). The recipient's *pre-pandemic baseline* is 1000 FTEs; its *adjusted pre-pandemic baseline* is 1,000 * 1.075 = 1075 FTEs. Now, assume that on March 3, 2021, the recipient had 800 budgeted FTEs in total (795 filled FTE positions and 5 unfilled FTE positions), with 50 FTEs primarily dedicated to responding to the COVID–19 public health emergency. The recipient would have the option of using either 800 FTEs or 750 FTEs as its *actual number of FTEs* for the calculation; assuming it chooses the lower number, it would be able to fund up to 325 FTEs with SLFRF funds (that is, 1,075 − 750 = 325 FTEs).

[244] Recipients may determine that a portion of an FTE's time is dedicated to responding to the COVID–19 public health emergency. Further, for administrative convenience, the recipient may consider public health and safety FTEs to be entirely devoted to mitigating or responding to the COVID–19 public health emergency if the FTE, or his or her operating unit of division, is primarily dedicated to responding to the COVID–19 public health emergency. Recipients may also consider other presumptions for assessing the extent to which an FTE, division, or operating unit is engaged in activities that respond to the COVID–19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID–19 response.

Specifically, the recipient would be able to use SLFRF to fund payroll and covered benefits for up to 325 FTEs that begin their employment on or after March 3, 2021, for costs obligated by December 31, 2024, and expended by December 31, 2026, consistent with the Uniform Guidance's Cost Principles, as long as SLFRF funds are used for additional FTEs hired over the recipient's 750 FTE level (which is its March 3, 2021 budgeted FTE level).

In hiring new employees, the final rule encourages recipients to ensure a diverse workforce. The final rule also prohibits recipients from using funds to temporarily fill positions during a labor dispute, as this would not constitute responding to the public health or negative economic impacts of the pandemic. Further, recipients must ensure that its hiring practices do not violate conflict-of-interest policies.[245] Total compensation for a hired employee that is substantially in excess of typical compensation for employees of their experience and tenure within the recipient's government, without a corresponding business case, may indicate a potential conflict-of-interest in fact or appearance.

Providing additional funding for employees who experienced pay cuts and furloughs. In recognition of the economic hardship caused by pay cuts and furloughs, additional funds may be provided to employees who experienced pay cuts or were furloughed since the onset of the pandemic on January 27, 2020. Recipients must be able to substantiate that the pay cut or furlough was substantially due to the public health emergency or its negative economic impacts (*e.g.,* fiscal pressures on state and local budgets) and should document their assessment. As a reminder, this additional funding must be reasonably proportional to the negative economic impact of the pay cut or furlough on the employee, which would include taking into account unemployment insurance (UI) benefits that a furloughed employee may have received during the furloughed period. Treasury presumes that additional funds beyond the difference in pay had the employee not received a pay cut or been furloughed would not be reasonably proportional.

Recipients may also provide premium pay to certain employees, as detailed further in section Premium Pay.

Avoiding layoffs. Funds may be used to maintain current compensation levels, with adjustments for inflation, in order to prevent layoffs that would otherwise be necessary. Recipients must be able to substantiate that layoffs were likely in the absence of SLFRF funds and would be substantially due to the public health emergency or its negative economic impacts (*e.g.,* fiscal pressures on state and local budgets) and should document their assessment.

Retaining workers. Funds may be used to provide worker retention incentives, which are designed to persuade employees to remain with the employer as compared to other employment options. Recipients must be able to substantiate that the employees were likely to leave employment in the absence of the retention incentive and should document their assessment. For example, a recipient may determine that a retention bonus is necessary based on the presence of an alternative employment offer for an employee.

All worker retention incentives must be narrowly tailored to need and should not exceed incentives traditionally offered by the recipient or compensation that alternative employers may offer to compete for the employees. Further, because retention incentives are intended to provide additional incentive to remain with the employer, they must be entirely additive to an employee's regular rate of wages and other remuneration and may not be used to reduce or substitute for an employee's normal earnings. Treasury will presume that retention incentives that are less than 25 percent of the rate of base pay for an individual employee or 10 percent for a group or category of employees are reasonably proportional to the need to retain employees, as long as the other requirements are met.

Ancillary administrative costs. Funds may be used to pay for ancillary administrative costs associated with administering SLFRF-funded hiring and retention programs detailed above, including costs to publish job postings, review applications, and onboard and train new hires. For additional information on administrative expenses, see section Administrative Expenses in Program Administration Provisions.

Effective Service Delivery: Administrative Expenses

The interim final rule provided that funds could be used for: ''Expenses to improve efficacy of public health or economic relief programs: Administrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.'' In the final rule, Treasury is clarifying that there are several categories of eligible administrative expenses.

First, recipients may use funds for administrative costs to improve the efficacy of public health or economic relief programs through tools like program evaluation, data analysis, and targeted consumer outreach (see section Effective Service Delivery: Program Evaluation, Data, and Outreach).

Second, recipients may use funds for administrative costs associated with programs to respond to the public health emergency and its negative economic impacts, including programs that are not funded by SLFRF or not federally funded. In other words, Treasury recognizes that responding to the public health and economic impacts of the pandemic requires many programs and activities, some of which are not funded by SLFRF. Executing these programs effectively is a component of responding to the public health and negative economic impacts of the pandemic.

Finally, recipients may use funds for direct and indirect administrative costs for administering the SLFRF program and projects funded by the SLFRF program. See section Administrative Expenses in Program Administration Provisions for details on this eligible use category.

Effective Service Delivery: Program Evaluation, Data, and Outreach

The Supplementary Information of the interim final rule provided that state, local and Tribal governments may use SLFRF funds to improve the design and execution of programs responding to the COVID–19 pandemic and to improve the efficacy of programs addressing negative economic impacts. The interim final rule included high-level guidance about how SLFRF funds could be used in this eligible use category, including the use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Since the publication of the interim final rule, Treasury has also released

[245] As part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c)112 that is applicable to all activities funded with the SLFRF award. Pursuant to this policy, decisions concerning SLFRF must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. A recipient may not use control over SLFRF for their own private gain. Furthermore, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

supplementary information on data analysis, evidence building, and program evaluation in the Compliance and Reporting Guidance.

Public Comment: Treasury received positive comments about the opportunity to invest in data and technology upgrades with SLFRF funds. For example, one commenter noted that investing in technology for better connectivity, coupled with software and hardware upgrades, will allow the workforce to be more productive. Treasury also received comments seeking clarification on using funds for investments in data and technology, including whether upgrading government websites to improve community outreach and investing in technologies that support social distancing were eligible uses.

Treasury Response: Governments with high capacity to use data and evidence to administer programs are more likely to be responsive to the needs of their community, more transparent about their community impact, and more resilient to emergencies such as the pandemic and its economic impacts.[246] Treasury recognizes that collecting high-quality data and developing community-driven, evidence-based programs requires resources to hire and build the capacity of staff, adopt new processes and systems, and use new technology and tools in order to effectively develop, execute, and evaluate programs. As such, Treasury is clarifying that recipients may use SLFRF funds toward the following non-exhaustive list of uses to address the data, evidence, and program administration needs of recipients. Additional information may be provided in the Compliance and Reporting Guidance.

- *Program evaluation and evidence resources* to support building and using evidence to improve outcomes, including development of Learning Agendas [247] to support strategic evidence building, selection of evidence-based interventions, and program evaluations including impact evaluations (randomized control trials and quasi-experimental designs) as well as rapid-cycle evaluations, process or implementation evaluations, outcome evaluations, and cost-benefit analyses. Recipients are encouraged to undertake rigorous program evaluations when practicable, assess the impact of their programs by beneficiary demographics (including race, ethnicity, gender, income, and other relevant factors), and engage with community stakeholders (including intended beneficiaries) when developing Learning Agendas and designing evaluations to ensure that programmatic, cultural, linguistic, and historical nuances are accurately and respectfully addressed.

Recipients are also encouraged to use relevant evidence Clearinghouses,[248] among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction (meaning models with strong or moderate evidence; see Compliance and Reporting Guidance for details on these terms).

- *Data analysis resources* to gather, assess, and use data for effective policy-making and real-time tracking of program performance to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These resources include but are not limited to data gathering, data cleaning, data analysis, data infrastructure, data management, data sharing, data transparency, performance management, outcomes-based budgeting, outcomes-based procurement, and other data needs. Treasury encourages the disaggregation of data to identify disparate program impacts and the use of cross-jurisdictional data sharing to better measure and implement government programs.
- *Technology infrastructure* resources to improve access to and the user-experience of government information technology systems, including upgrades to hardware and software as well as improvements to public-facing websites or to data management systems, to increase public access and improve public delivery of government programs and services (including in the judicial, legislative, or executive branches).
- *Community outreach and engagement* resources to support the gathering and sharing of information in ways that improve equity and effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources. These methods include but are not limited to community meetings, online surveys, focus groups, human-centered design activities, behavioral science techniques, and other community engagement tools.
- *Capacity building* resources to support using data and evidence in designing, executing, and evaluating programs, including hiring public sector staff, contractors, academics, consultants, and others with expertise in evaluation, data, technology, and community engagement as well as technical assistance support for public sector staff, staff of subrecipients, and community partners to support effective implementation of SLFRF-funded programs and programs that respond to the public health emergency and its negative economic impacts, or which households, small businesses, or impacted industries are accessing during the pandemic that are funded by other sources.

Administrative Needs Caused or Exacerbated by the Pandemic

As described in guidance and the interim final rule, SLFRF funds may be used to address administrative needs of recipient governments that were caused or exacerbated by the pandemic. Guidance following the interim final rule included several examples of this, for example, uses of funds to address backlogs resulting from pandemic-related shutdowns (*e.g.,* backlogs in court systems).[249] This also includes

[246] Results for America, Invest in What Works State Standard of Excellence (August 2020), *https://2020state.results4america.org/2020_State-Standard-of-Excellence.pdf.*

[247] Learning Agendas are systematic plans to identify, prioritize, answer important questions about programs and policies using analytic techniques that are appropriate to the type of question asked. For more information on learning agendas, please see OMB Memorandum M–19–23, available at: *https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf* and OMB Memorandum M–21–27, available at: *https://www.whitehouse.gov/wp-content/uploads/2021/06/M-21-27.pdf.*

[248] Evidence Clearinghouses are databases of research in particular program areas. Frequently these Clearinghouses identify evidence-based programs, the strength of the evidence for those programs, and provide contextual or supporting information in easy to understand formats. Many federal departments have developed rigorous and helpful Clearinghouses that cover a wide range of uses enumerated in this final rule as well as other programs that may be responsive to public health or negative economic impacts of the pandemic. For more information on Clearinghouses, please see the Compliance and Reporting Guidance: U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

[249] *See FAQ 2.19.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.* In the case of courts specifically, this includes ''implementing COVID–19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case

using funds for increased repair or maintenance needs to respond to significantly greater use of public facilities during the pandemic (*e.g.,* increased use of parks resulting in damage or increased need for maintenance). Some commenters expressed support for the ability to use funds for these purposes. Treasury is maintaining these enumerated eligible uses in the final rule and clarifying that capital expenditures such as technology infrastructure to adapt government operations to the pandemic (*e.g.,* video-conferencing software, improvements to case management systems or data sharing resources), reduce government backlogs, or meet increased maintenance needs are eligible.

b. Capital Expenditures

The interim final rule expressly permitted use of funds for a limited number of capital expenditures that mostly pertained to COVID–19 prevention and mitigation. These included capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics; adaptations to public buildings to implement COVID–19 mitigation tactics; ventilation improvements in congregate settings, health care settings, or other key locations; assistance to small businesses and nonprofits and aid to impacted industries to implement COVID–19 prevention or mitigation tactics, such as physical plant changes to enable social distancing. For disproportionately impacted populations and communities, the interim final rule also expressly permitted development of affordable housing to increase the supply of affordable and high-quality living units.

Public Comment: Many commenters supported the interim final rule's allowance of capital expenditures in facilities to meet pandemic operational needs but requested that the final rule explicitly allow for a broader range of capital expenditures. Commenters expressed an interest in investing in equipment, real property, and facilities that they argued will yield lasting benefits beyond the SLFRF period of performance. Some commenters stated that the approach in the interim final rule limited the vast majority of capital expenditures to governments that experienced revenue loss under Sections 602(c)(1)(C) and 603(c)(1)(C) and that this approach may prevent some governments from fully meeting the needs of their residents. A few commenters argued that Treasury should limit use of funds on capital expenditures not related to addressing a direct pandemic harm, such as general economic development or workforce development, and some expressed support for generally limiting capital expenditures to those that address the needs of low-income communities and communities of color.

Many commenters requested that capital expenditures related to direct COVID–19 public health response be included as enumerated eligible uses. The requested types of expenditures include improvements and construction of hospitals and health clinics (including behavioral health clinics), as well as other health-related infrastructure improvements, such as improvements to medical equipment or public health information technology. These commenters stated that investments in health and public health systems are vital to ensuring critical infrastructure necessary to respond to continued impacts of COVID–19 or to address disparities in health, due to lack of access to health care, that contributed to disproportionate impacts of COVID–19 on some communities. Further, some commenters requested that construction or improvements of emergency management and public safety facilities be deemed eligible, citing that some of these sites serve as remote vaccination sites or are otherwise crucial to the pandemic public health response.

Commenters also requested use of funds for capital expenditures that support community needs apart from health care, such as new construction or improvements to schools, affordable housing (beyond presumed disproportionately impacted communities), childcare facilities, and community centers; some suggested that all types of projects permissible under the Community Development Block Grant Program should be eligible both for policy and administrability reasons. Further, some commenters also asked for clarification as to whether parks and recreational facilities are eligible if built in certain disproportionately impacted areas, as well as public transportation infrastructure.

Finally, some commenters also requested use of funds for capital expenditures in government administration buildings, such as public courthouses, as well as technology infrastructure that would allow for remote delivery of public benefits. Others also asked about whether funds could be used to renovate vacant business district buildings or commercial spaces to spur economic recovery.

Treasury Response: Capital expenditures, in certain cases, can be appropriate responses to the public health and economic impacts of the pandemic, in addition to programs and services. Like other eligible uses of SLFRF funds in this category, capital expenditures should be a related and reasonably proportional response to a public health or negative economic impact of the pandemic. The final rule clarifies and expands how SLFRF funds may be used for certain capital expenditures, including criteria and documentation requirements specified in this section, as applicable.

Treasury provides presumptions and guidelines for capital expenditures that are enumerated earlier in sections Public Health, Negative Economic Impacts, and General Provisions: Other under the Public Health and Negative Economic Impact eligible use category (''enumerated projects''), along with capital expenditures beyond those enumerated by Treasury. In addition to satisfying the two-part framework in Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact for identifying and designing a response to a pandemic harm, Treasury will require projects with total expected capital expenditure costs of $1 million or greater to undergo additional analysis to justify their capital expenditure. Increased reporting requirements will be required for projects that are larger in size, as well as projects that are not enumerated as eligible by Treasury, with certain exceptions for Tribal governments discussed below. Smaller projects with total expected capital expenditures below $1 million will not be required to undergo additional analysis to justify their capital expenditure, as such projects will be presumed to be reasonably proportional, provided that they are responding to a harm caused or exacerbated by the public health emergency. These standards and documentation requirements are designed to minimize administrative burden while also ensuring that projects are reasonably proportional and supporting Treasury's risk-based approach to overall program management and monitoring.

This section provides (1) an overview of general standards governing capital expenditures; (2) presumptions on capital expenditures, which help guide recipients in determining whether the expenditure meets the standards and the associated documentation requirements; and (3) additional standards and requirements that may apply.

resolution, and other expenses to expedite case resolution are eligible uses.''

Overview of General Standards

In considering whether a capital expenditure would be eligible under the public health and negative economic impacts eligible use category, recipients must satisfy the requirements for all uses under the public health and negative economic impacts eligible use category, including identifying an impact or harm and designing a response that addresses or responds to the identified impact or harm. Responses must be reasonably designed to benefit the individual or class that experienced the impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Recipients should consult further details on this standard provided in the sections Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards.

In addition to the framework described above, for projects with total expected capital expenditures of $1 million or greater, recipients must complete and meet the substantive requirements of a Written Justification for their capital expenditure, except for Tribal governments as discussed below. This Written Justification helps clarify the application of this interpretive framework to capital expenditures, while recognizing that the needs of communities differ. In particular, this justification reflects the fact that the time required for a large construction project may make capital expenditures less responsive to pandemic-related needs relative to other types of responses. In addition, as discussed in section Timeline for Use of SLFRF Funds of this Supplemental Information, SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. Capital expenditures may involve long lead-times, and the Written Justification may support recipients in analyzing proposed capital expenditures to confirm that they conform to the obligation and expenditure timing requirements. Further, such large projects may be less likely to be reasonably proportional to the harm identified. For example, construction of a new, larger public facility for the purpose of increasing the ability to socially distance generally would not be considered a reasonably proportional response compared to other less time- and resource-intensive options that may be available and would be equally or more effective. Other solutions, such as improvements in ventilation, could be made more quickly and are typically more cost effective than construction of a new, larger facility. The needs of communities differ, and recipients are responsible for identifying uses of SLFRF funds that best respond to these needs. The Written Justification recognizes this while also establishing consistent documentation and reporting to support monitoring and compliance with the ARPA and final rule. Finally, the Written Justification also reflects the fact that infrastructure projects are generally not within scope of this eligible use category. See section Uses Outside the Scope of this Category in General Provisions: Other.

As noted above, Tribal governments are not required to complete the Written Justification for projects with total capital expenditures of $1 million or greater. Tribal governments generally have limited administrative capacity due to their small size and corresponding limited ability to supplement staffing for short-term programs. In addition, Tribal governments are already subject to unique considerations that require additional administrative processes and administrative burden for Tribal government decision making, including capital expenditures. Tribal governments generally are subject to a jurisdictionally complex sets of rules and regulations in the case of improvements to land for which the title is held in trust by the United States for a Tribe (Tribal Trust Lands).[250] This includes the requirement in certain circumstances to seek the input or approval of one or more federal agencies such the Department of the Interior, which holds fee title of Tribal Trust Lands.

As a result of their limited administrative capacity and unique and complex rules and regulations applicable to Tribal governments operating on Tribal Trust Lands, Tribal governments would experience significant and redundant administrative burden by also being required to complete a Written Justification for applicable capital expenditures. While Tribal governments are not required to complete the Written Justification for applicable capital expenditures, the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm. Note that, as a general matter, Treasury may also request further information on SLFRF expenditures and projects, including capital expenditures, as part of the regular SLFRF reporting and compliance process, including to assess their eligibility under the final rule.

The Written Justification should (1) describe the harm or need to be addressed; (2) explain why a capital expenditure is appropriate to address the harm or need; and (3) compare the proposed capital expenditure against alternative capital expenditures that could be made. The information required for the Written Justification reflects the framework applicable to all uses under the public health and negative economic impacts eligible use category, providing justification for the reasonable design, relatedness, and reasonable proportionality of the capital expenditure in response to the harm or impact identified.

1. *Description of harm or need to be addressed:* Recipients should provide a description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. When appropriate, recipients may provide quantitative information on the extent and type of the harm, such as the number of individuals or entities affected.

2. *Explanation of why a capital expenditure is appropriate:* Recipients should provide an independent assessment demonstrating why a capital expenditure is appropriate to address the specified harm or need. This should include an explanation of why existing capital equipment, property, or facilities would be inadequate to addressing the harm or need and why policy changes or additional funding to pertinent programs or services would be insufficient without the corresponding capital expenditures. Recipients are not required to demonstrate that the harm or need would be irremediable but for the additional capital expenditure; rather, they may show that other interventions would be inefficient, costly, or otherwise not reasonably designed to remedy the harm without additional capital expenditure.

3. *Comparison of the proposed capital expenditure against alternative capital expenditures:* Recipients should provide an objective comparison of the proposed capital expenditure against at least two alternative capital expenditures and demonstrate why their proposed capital expenditure is superior to alternative capital expenditures that could be made. Specifically, recipients should assess the proposed capital expenditure against at least two alternative types or sizes of capital expenditures that are potentially effective and reasonably

[250] See 25 U.S.C. 5108.

feasible. Where relevant, recipients should compare the proposal against the alternative of improving existing capital assets already owned or leasing other capital assets. Recipients should use quantitative data when available, although they are encouraged to supplement with qualitative information and narrative description. Recipients that complete analyses with minimal or no quantitative data should provide an explanation for doing so.

In determining whether their proposed capital expenditure is superior to alternative capital expenditures, recipients should consider the following factors against each selected alternative.

a. *A comparison of the effectiveness of the capital expenditures in addressing the harm identified.* Recipients should generally consider the effectiveness of the capital expenditures in addressing the harm over the useful life of the capital asset and may consider metrics such as the number of impacted or disproportionately impacted individuals or entities served, when such individuals or entities are estimated to be served, the relative time horizons of the project, and consideration of any uncertainties or risks involved with the capital expenditure.

b. *A comparison of the expected total cost of the capital expenditures.* Recipients should consider the expected total cost of the capital expenditure required to construct, purchase, install, or improve the capital assets intended to address the public health or negative economic impact of the public health emergency. Recipients should include pre-development costs in their calculation and may choose to include information on ongoing operational costs, although this information is not required.

Recipients should balance the effectiveness and costs of the proposed capital expenditure against alternatives and demonstrate that their proposed capital expenditure is superior. Further, recipients should choose the most cost-effective option unless it substantively reduces the effectiveness of the capital investment in addressing the harm identified.

As an example, a recipient considering building a new diagnostic testing laboratory to enhance COVID–19 testing capacity may consider whether existing laboratories sufficiently meet demand for COVID–19 testing, considering the demand for test results (along with their turnaround time) as well as the impact of current testing availability on the spread of COVID–19. Recipients may also consider other public health impacts of the level of diagnostic testing capacity, for example if insufficient capacity has decreased testing for other health conditions. The recipient may consider alternatives such as expanding existing laboratories or building a laboratory of a different size. In comparing the effectiveness of the capital expenditures, examples of factors that the recipient may consider include when the facilities will become operational and for how long; the daily throughput of COVID–19 tests; and the effect on minimizing delays in test results on the populations that such tests will serve. In comparing costs, the recipient may compare the total expected cost of the new laboratory (including costs of acquisition of real property, construction of the laboratory, and purchase of any necessary equipment needed to operationalize the lab), against the expected costs of expanding existing laboratories (whether by replacing current equipment with higher throughout devices or physically expanding space to accommodate additional capacity) or building a new laboratory of a different size, including by leasing property. As a reminder, recipients should only consider alternatives that are potentially effective and reasonably feasible.

Because, in all cases, uses of SLFRF funds to respond to public health and negative economic impacts of the pandemic must be related and reasonably proportional to a harm caused or exacerbated by the pandemic, some capital expenditures may not eligible. For example, constructing a new correctional facility would generally not be a proportional response to an increase in the rate of certain crimes or overall crime as most correctional facilities have historically accommodated fluctuations in occupancy.[251] In addition, construction of new congregate facilities, which would generally be expected to involve expenditures greater than $1 million, would generally not be a proportional response to mitigate or prevent COVID–19, because such construction is generally expected to be more costly than alternative approaches or capital expenditures that may be equally or more effective in decreasing spread of the disease.[252] These alternatives include personal protective equipment, ventilation improvements, utilizing excess capacity in other facilities or wings, or temporary facility capacity expansions.

Large capital expenditures intended for general economic development or to aid the travel, tourism, and hospitality industries—such as convention centers and stadiums—are, on balance, generally not reasonably proportional to addressing the negative economic impacts of the pandemic, as the efficacy of a large capital expenditure intended for general economic development in remedying pandemic harms may be very limited compared to its cost.[253]

Presumptions on Capital Expenditures

For administrative convenience, the final rule provides presumptions on whether a Written Justification is required—and required to be submitted to Treasury through reporting—based on the type and size of the capital expenditure, as detailed in the table below.

As discussed above, Tribal governments are not required to complete the Written Justification for applicable capital expenditures, but the associated substantive requirements continue to apply, including the requirement that a capital expenditure must be reasonably designed to benefit the individual or class that experienced the identified impact or harm and must be related and reasonably proportional to the extent and type of impact or harm.

[251] *See, e.g.,* ''Economic Perspectives on Incarceration and the Criminal Justice System,'' Council of Economic Advisers (April 2016), pg. 36–43.

[252] For instance, the CDC has published detailed recommendations for nursing homes, long-term care facilities, and correctional and detention facilities, on infection prevention and control. Many of these recommendations are relatively low cost, such as proper use of PPE. In addition, increasing vaccination rates among nursing home staff is among the most important ways to decrease the spread of the disease. Centers for Disease Control and Prevention, Interim Infection Prevention and Control Recommendations to Prevent SARS–CoV–2 Spread in Nursing Homes (September 10, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html#anchor_1631030153017.*

[253] For instance, researchers have found no consistent positive relationship between building sports facilities and local economic development. As Siegfried and Zimbalist (2000, 103) write in a review of the literature, ''independent work on the economic impact of stadiums and arenas has uniformly found that there is no statistically significant positive correlation between sports facility construction and economic development.'' John Siegfried and Andrew Zimbalist, The Economics of Sports Facilities and Their Communities, Journal of Economic Perspectives 14, no. 3 (Summer 2000): 95–114, *https://www.aeaweb.org/articles?id=10.1257/jep.14.3.95.*

If a project has total expected capital expenditures of	and the use is enumerated by Treasury as eligible, then [254]	and the use is beyond those enumerated by Treasury as eligible, then [255]
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

In selecting these thresholds, Treasury recognized that capital expenditures vary widely in size and therefore would benefit from tiered treatment to implement eligibility standards while minimizing administrative burden, especially for smaller projects. For example, Treasury selected $1 million as a threshold for whether a recipient needs to complete a Written Justification as well as a threshold under which capital expenditures would be presumed reasonably proportional. Treasury estimates that $1 million would encapsulate the costs of a significant portion of equipment or small renovations. These types of smaller projects are often a necessary and reasonably proportional part of a response to the public health emergency; therefore, the $1 million threshold provides a simplified pathway to complete smaller projects more likely to meet the eligibility standard. At the same time, Treasury selected $10 million as the threshold for more intensive reporting requirements, estimating that projects larger than $10 million would likely constitute significant improvements or construction of mid- or large-sized facilities. As discussed above, given their scale and longer time to completion, these types of larger projects may be less likely to be reasonably proportional responses. The $10 million threshold also generally aligns with thresholds in other parts of the SLFRF program, such as for enhanced reporting on labor practices.

Expenditures from closely related activities directed toward a common purpose are considered part of the scope of one project. These expenditures can include capital expenditures, as well as expenditures on related programs, services, or other interventions. A project includes expenditures that are interdependent (*e.g.,* acquisition of land, construction of the school on the land, and purchase of school equipment), or are of the same or similar type and would be utilized for a common purpose (*e.g.,* acquisition of a fleet of ambulances that would be used for COVID–19 emergency response). Recipients must not segment a larger project into smaller projects in order to evade review. A recipient undertaking a set of identical or similar projects (*e.g.,* development of a number of new affordable housing complexes across the recipient jurisdiction) may complete one Written Justification comprehensively addressing the entire set of projects.

Projects Enumerated as Eligible by Treasury

Under the public health and negative economic impacts eligible use category, the final rule provides a non-exclusive list of eligible uses of funding for projects that respond to the public health emergency or its negative economic impacts. Treasury has determined that these enumerated projects are related to the public health emergency and its negative economic impacts; however, recipients (other than Tribal governments) undertaking these projects with total expected capital expenditures of $1 million or greater must still complete and meet the substantive requirements of a Written Justification as part of their demonstration that the project is a related and reasonably proportional response to the harm identified.

• *Projects with total expected capital expenditures of under $1 million:* Treasury provides a safe harbor for projects with total expected capital expenditures of less than $1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification for the capital expenditure. In essence, recipients may pursue an enumerated project with total expected capital expenditures of under $1 million without having to undergo additional assessments to meet SLFRF requirements.

• *Projects with total expected capital expenditures of at least $1 million but under $10 million:* Recipients should complete a Written Justification for the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Recipients will not be required to submit the Written Justification as part of regular reporting to Treasury but should keep documentation for their records.

• *Projects with total expected capital expenditures of at least $10 million:* Similar to the above, recipients should complete a Written Justification of the capital expenditure and make an independent assessment of whether their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury. Similar to other parts of the SLFRF program, such as on reporting on labor practices, Treasury recognizes that projects with expected total capital expenditures of at least $10 million may be less likely to meet eligibility requirements and therefore requires recipients to provide an enhanced level of information to Treasury.

Projects Beyond Those Enumerated as Eligible by Treasury

As with all uses, recipients that undertake capital expenditures beyond those enumerated as eligible by Treasury must meet the two-part framework under Standards: Designating a Public Health Impact and Standards: Designating a Negative Economic Impact under General Provisions: Structure and Standards,

[254] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury recognizes that enumerated eligible uses are ''related'' to the public health emergency and its negative economic impacts and presumed to be reasonably proportional, except recipients pursuing projects with expected total capital expenditures equal to or greater than $1 million should still independently determine that the expenditures are a reasonably proportional response. Enumerated projects with total expected capital expenditures under $1 million receive a safe harbor and deemed to meet the related and reasonably proportional standard.

[255] Whether or not a Written Justification is required, recipients should still determine that the response is related and reasonably proportional to the public health emergency and its negative economic impacts. Treasury presumes that projects with total expected capital expenditures under $1 million are reasonably proportional in size to responding to the public health emergency and its negative economic impacts; however, recipients should determine that the response otherwise meets the requirements of the standard, including that the response is related to the public health emergency and its negative economic impacts.

including the requirement that responses are related and reasonably proportional to the harm or impact identified. As part of that assessment, these recipients may also be asked to complete a Written Justification. Recipients (other than Tribal governments) are subject to the following presumptions for the Written Justification of the capital expenditure, based on the total expected capital expenditures of the project:

• *Projects with total expected capital expenditures of under $1 million:* Treasury provides a safe harbor for unenumerated projects with total expected capital expenditures of under $1 million and will not require recipients to complete, submit, or meet the substantive requirements of a Written Justification of the capital expenditure. Recipients should still make a determination as to whether the capital expenditure is part of a response that is related and reasonably proportional to the public health emergency or its negative economic impacts.

• *Projects with total expected capital expenditures of $1 million or over:* Recipients should complete a Written Justification of the capital expenditure and make an independent assessment that their proposed capital expenditure meets the substantive requirements of the Written Justification. Further, recipients will be asked to submit the Written Justification as part of regular reporting to Treasury.

Treasury employs a risk-based approach to overall program management and monitoring, which may result in heightened scrutiny on larger projects. Accordingly, recipients pursuing projects with larger capital expenditures should complete more detailed analyses for their Written Justification, commensurate with the scale of the project.

Additional Provisions, Standards, and Definitions

Strong Labor Standards in Construction

Treasury encourages recipients to carry out projects in ways that produce high-quality work, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (*e.g.,* professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality projects and support the economic recovery through strong employment opportunities for workers. Such practices will reduce likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will seek information from recipients on their workforce plans and practices related to capital expenditures undertaken under the public health and negative economic impacts eligible use category with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided.

Environmental, Uniform Guidance, and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects using SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of capital expenditures in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using the SLFRF funds, projects must be completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

Further, as with all other uses of funds under the SLFRF program, the Uniform Guidance at 2 CFR part 200 applies to capital expenditures unless stated otherwise. Importantly, this includes 2 CFR part 200 Subpart D on post-federal award requirements, including property standards pertaining to insurance coverage, real property, and equipment; procurement standards; sub-recipient monitoring and management; and record retention and access.

Definitions

Treasury adopts several definitions from the Uniform Guidance at 2 CFR 200.1 under this section, including for capital expenditures, capital assets, equipment, and supplies.

Per the Uniform Guidance, the term ''capital expenditures'' means ''expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.'' The term ''capital assets'' means ''tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with [Generally Accepted Accounting Principles].''

Capital assets include lands, facilities, equipment, and intellectual property. Equipment means ''tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000.'' Supplies, which means all tangible personal property other than those included as ''equipment,'' are not considered capital expenditures.

Recipients may also use SLFRF funds for pre-project development costs that are tied to or reasonably expected to lead to an eligible capital expenditure. For example, pre-project costs associated with planning and engineering for an eligible project are considered an eligible use of funds.

c. Distinguishing Subrecipients Versus Beneficiaries

Under the interim final rule, state, local, and Tribal governments that receive a federal award directly from a federal awarding agency, such as Treasury, are designated as ''recipients,''

and state, local, and Tribal governments are authorized to transfer funds to other entities, including private entities like nonprofits. The interim final rule stated that, ''[a] transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding.''

For funds transferred to a subrecipient, the interim final rule noted that ''[r]ecipients continue to be responsible for monitoring and overseeing the subrecipient's use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the SLFRF funds for the duration of the award.''

Public Comment: Treasury received many comments requesting clarification about which entities qualify as subrecipients and are, in turn, subject to subrecipient monitoring and reporting requirements. For example, commenters sought clarification about whether a nonprofit that received a grant to provide services under a program to carry out an enumerated eligible use would qualify as a subrecipient and be subject to subrecipient monitoring and reporting requirements. Similarly, commenters also wondered if a nonprofit that received a grant in recognition of experiencing a negative economic impact of the public health emergency would also be a subrecipient and subject to subrecipient reporting requirements.

Treasury Response: Treasury is clarifying the distinction between a subrecipient and beneficiary in the final rule. The Uniform Guidance definitions for subaward and subrecipient inform Treasury's distinction between subrecipients and beneficiaries.

First, per 2 CFR 200.1 of Uniform Guidance ''[s]ubaward means an award provided by a pass-through entity [256] to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.''

Further, 2 CFR 200.1 of the Uniform Guidance defines a subrecipient, in that ''[s]ubrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.'' Treasury is aligning the definition of subrecipient in the final rule with the definition of subrecipient in the Uniform Guidance.

Treasury is maintaining the monitoring and subrecipient reporting requirements outlined in the final rule. Per 2 CFR 200.101 (b)(2) of the Uniform Guidance, the terms and conditions of federal awards flow down to subawards to subrecipients. Therefore, non-federal entities, as defined in the Uniform Guidance, must comply with the applicable requirements in the Uniform Guidance regardless of whether the non-federal entity is a recipient or subrecipient of a federal award. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements.

The Uniform Guidance definitions for both subaward and subrecipient specify that payments to individuals or entities that are direct beneficiaries of a federal award are not considered subrecipients. The final rule adopts this definition of a beneficiary and outlines that households, communities, small businesses, nonprofits, and impacted industries are all potential beneficiaries of projects carried out with SLFRF funds. Beneficiaries are not subject to the requirements placed on subrecipients in the Uniform Guidance, including audit pursuant to the Single Audit Act and 2 CFR part 200, subpart F or subrecipient reporting requirements.

The distinction between a subrecipient and a beneficiary, therefore, is contingent upon the rationale for why a recipient is providing funds to the individual or entity. If the recipient is providing funds to the individual or entity for the purpose of carrying out a SLFRF program or project on behalf of the recipient, the individual or entity is acting as a subrecipient. Acting as a subrecipient, the individual or entity is subject to subrecipient monitoring and reporting requirements. Conversely, if the recipient is providing funds to the individual or entity for the purpose of directly benefitting the individual or entity as a result of experiencing a public health impact or negative economic impact of the pandemic, the individual or entity is acting as a beneficiary. Acting as a beneficiary, the individual or entity is not subject to subrecipient monitoring and reporting requirements.

d. Uses Outside the Scope of This Category

Summary of the Interim Final Rule and Final Rule Structure

In the interim final rule, Treasury noted that certain uses of funds are not permissible under the eligible use category of responding to the public health and negative economic impacts of the pandemic. In the final rule, these uses remain impermissible, but Treasury has re-categorized where they are addressed to increase clarity.

Specifically, the interim final rule provided that the following uses of funds are not eligible under this eligible use category: Contributions to rainy day funds, financial reserves, or similar funds; payment of interest or principal on outstanding debt instruments; fees or issuance costs associated with the issuance of new debt; and satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID–19 public health emergency. These uses of funds remain ineligible under the final rule; Treasury has re-categorized these issues to the section Restrictions on Use, which describes restrictions that apply to all eligible use categories, to clarify that these uses are not eligible under any eligible use category of SLFRF. Treasury responds to public comments on this issue in the section Restrictions on Use.

As noted above, the interim final rule also posed several questions on what other types of services or costs Treasury should consider as eligible uses to respond to the public health and negative economic impacts of COVID–19, including in disproportionately impacted communities. In this section, Treasury addresses proposed uses of funds suggested by commenters that Treasury has not included as enumerated eligible uses of funds in this eligible use category.

General Eligible Uses

Public Comment: Commenters proposed a wide variety of additional recommended enumerated eligible uses

[256] In this context, a pass-through entity means a recipient of SLFRF funds.

in all sections of the public health and negative economic impacts eligible use category, including in impacted and disproportionately impacted communities. The proposed additional uses included general categories of services (*e.g.,* legal and social services, long-term investments to remediate long-term disparities, response to natural disasters). Other suggested uses of funds respond to needs widely experienced across the country (*e.g.,* access to and affordability of health insurance). Finally, other suggested uses of funds were highly specific (*e.g.,* healthcare equipment for a specific health condition, fire hydrants, weather alert systems) or most applicable to the particularized needs to certain populations or geographic areas of the United States (*e.g.,* senior citizens, immigrants, formerly incarcerated individuals, responding to environmental issues in certain geographic regions). Other commenters generally requested a high degree of flexibility to respond to the particular needs of their communities.

Treasury Response: Given the large number and diversity of SLFRF recipients, Treasury has aimed to include as enumerated eligible uses programs, services, and capital expenditures that respond to public health and negative economic impacts of the pandemic experienced widely in many jurisdictions across the country, making it clear and simple for recipients to pursue these enumerated eligible uses under the final rule. This provides enumerated eligible uses that many recipients may want to pursue, while including uses that are responsive to the pandemic's impacts across the diverse range of SLFRF recipients. In the final rule, Treasury has clarified several additional uses that generally respond to pandemic impacts experienced broadly across jurisdictions and populations.

Treasury has not chosen to include as enumerated uses all uses proposed by commenters; given the significant range, and in some cases highly specific nature, of the proposed uses Treasury was not able to assess that the proposed uses would respond to negative economic impacts experienced generally across the country, supporting an enumerated eligible use available to all recipients presumptively.

However, Treasury emphasizes that the enumerated eligible uses are non-exhaustive and that other uses, beyond those enumerated, are eligible. Treasury recognizes that the impacts of the pandemic vary over time, by jurisdiction, and by population; as such, the final rule provides flexibility for recipients to identify other public health or negative economic impacts to additional households, small businesses, or nonprofits, including classes of these entities, and pursue programs and services that respond to those impacts. Treasury also notes that some populations are presumed to be impacted or disproportionately impacted by the pandemic, and thus eligible for responsive services; these presumed eligible populations may encompass many individuals in the specific populations for whom commenters recommended services. For details on these issues, see section General Provisions: Structure and Standards.

Infrastructure, Community Development, and General Economic Development

Some potential additions to enumerated eligible uses were also recommended by several commenters each but are not included as enumerated eligible uses in the final rule.

Public Comment: Infrastructure: In the interim final rule, Treasury noted that a ''general infrastructure project, for example, typically would not be included [in this eligible use category] unless the project responded to a specific pandemic public health need.''

Numerous commenters requested that Treasury permit investments in infrastructure as a response to the public health and negative economic impacts of the pandemic. While these comments most commonly recommended that constructing and maintaining roads and surface transportation infrastructure be eligible, the proposed uses for infrastructure ranged widely and included parking lots, bridges, traffic management infrastructure, solid waste disposal facilities, and utility infrastructure (outside of water, sewer, and broadband).

Many commenters argued that infrastructure development and maintenance is a pressing need in their communities and that their communities had less need for water, sewer, and broadband infrastructure or other eligible uses to respond to the public health and negative economic impacts of the pandemic. Other commenters argued that these uses would stimulate the economy, attract businesses, or allow for tourist movement; these commenters argued that, by generally supporting a stronger economy or facilitating conditions that are more conducive to business activity and tourism, these uses respond to the negative economic impacts of the pandemic.

Treasury Response: In the final rule, Treasury is maintaining the approach under the interim final rule that general infrastructure projects, including roads, streets, and surface transportation infrastructure, would generally not be eligible, unless the project responded to a specific pandemic public health need or a specific negative economic impact.

The ARPA expressly includes infrastructure if it is ''necessary'' and in water, sewer, or broadband, suggesting that the statute contemplates only those types of infrastructure. Further, responding to the public health and negative economic impacts of the pandemic requires identifying whether, and the extent to which, there has been a harm that resulted from the COVID–19 public health emergency and whether, and the extent to which, the use would respond or address this harm. Uses of funds intended to generally grow the economy and therefore enhance opportunities for workers and businesses would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact.

Note, however, that Treasury has clarified that capital expenditures that are related and reasonably proportional to responding to the public health and economic impacts of the pandemic are eligible uses of funds, in addition to programs and services; for details on eligibility criteria for capital expenditures, see section Capital Expenditures in General Provisions: Other.

Public Comment: Community Development Block Grant: Several commenters recommended that Treasury enumerate as eligible uses those eligible under the Department of Housing and Urban Development's Community Development Block Grant (CDBG) or the Housing and Community Development Act of 1974, which established the CDBG program. Commenters requested that these uses be eligible either to respond to the negative economic impacts of the pandemic, or in the alternate the disproportionate negative economic impacts of the pandemic in certain communities. Under the CDBG program, recipient governments may undertake a wide range of community and economic

development services and projects. Commenters reasoned that many state and local governments are familiar with this program, and that aligning to its eligible uses may help recipients easily understand and pursue eligible projects. Commenters also noted that Treasury had chosen to align with existing federal programs in other eligible use categories, namely water infrastructure, in the interim final rule.

Treasury Response: In the final rule, Treasury is not including all categories of projects permissible under CDBG as enumerated eligible uses to respond to the public health and negative economic impacts of the pandemic. Because CDBG permits such a broad range of activities, including services to individual households, communities, small businesses, general economic development activities, and capital expenditures, Treasury determined that it was more appropriate to assess the underlying types of projects eligible within CDBG and whether each type of project responds to the negative economic impacts of the pandemic. In other words, Treasury considered whether various types of community and economic development projects respond to the impacts of the pandemic in different communities and circumstances. In the final rule, Treasury addresses the eligibility of these various types of projects in each relevant eligible use category within public health and negative economic impacts under SLFRF, including assistance for impacted households, disproportionately impacted households, disproportionately impacted small businesses, and capital expenditures.

Public Comment: General Economic Development: Treasury provided guidance following the interim final rule that general economic development or workforce development would generally not be eligible as it does not respond to a negative economic impact of the COVID–19 public health emergency.

Some commenters recommended that Treasury expand enumerated eligible uses to include general economic development activities, beyond those that respond to negative economic impacts of the pandemic, such as creating an economic development strategy for the jurisdiction's overall economic growth, creating a general workforce development strategy, or providing funds to businesses that did not experience negative economic impacts to carry out economic development activities or to incentivize the addition or retention of jobs. Commenters supportive of assistance to businesses for general economic development activities argued that subsidies to businesses increase job growth and that, in some cases, assistance to companies that excelled during the public health emergency would help create more job opportunities for workers or expand the jurisdiction's tax base and produce funds to support government services. In contrast, other commenters argued that academic research consistently finds that economic development subsidies have a negligible, or even negative, economic effect, citing research findings to this effect.[257]

Treasury Response: In the final rule, Treasury maintains the interim final rule's approach that general economic development or workforce development, meaning activities that do not respond to negative economic impacts of the pandemic and rather seek to more generally enhance the jurisdiction's business climate, would generally not be eligible under this eligible use category. As noted above, to identify an eligible use of funds under this category, a recipient must identify a beneficiary or class of beneficiaries that experienced a harm or impact due to the pandemic, and eligible uses of funds must be reasonably designed to respond to the harm, benefit the beneficiaries that experienced it, and be related and reasonably proportional to that harm or impact.

As noted above, recipients should analyze eligible uses based on the beneficiary of the assistance, and recipients may not provide assistance to small businesses or impacted industries that did not experience a negative economic impact. Provision of assistance to a business that did not experience a negative economic impact, under the theory that such assistance would generally grow the economy and therefore enhance opportunities for workers, would not be an eligible use, because such assistance is not reasonably designed to impact individuals or classes that have been identified as having experienced a negative economic impact. In other words, there is not a reasonable connection between the assistance provided and an impact on the beneficiaries. Such an activity would be attenuated from and thus not reasonably designed to benefit the households that experienced the negative economic impact. Research cited by some commenters finding that business subsidies have limited or negative economic impact also suggests that such a response may not be reasonably designed to benefit households and other entities impacted by the pandemic. Similarly, planning activities for an economic development or workforce strategy regarding general future economic growth do not provide a program, service, or capital expenditure that responds to negative economic impacts of the pandemic.

However, Treasury notes that the final rule includes as enumerated eligible uses many types of assistance that respond to negative economic impacts of the pandemic and may produce economic development benefits. For example, see sections Assistance to Unemployed Workers, Assistance to Small Businesses, and Capital Expenditures.

B. Premium Pay

Background and Summary of the Interim Final Rule

Sections 602(c)(1)(B) and 603(c)(1)(B) of the Social Security Act, as added by the ARPA, provide that SLFRF funds may be used ''to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the . . . government that are performing such essential work, or by providing grants to eligible employers

[257] See, *e.g.,* Matthew D. Mitchell et al., The Economics of a Targeted Economic Development Subsidy (Arlington, VA: Mercatus Center at George Mason University, 2019), 5, available at *https://www.mercatus.org/publications/government-spending/economics-targeted-economic-development-subsidy*; Timothy J. Bartik, Who Benefits from Economic Development Incentives? How Incentive Effects on Local Incomes and the Income Distribution Vary with Different Assumptions about Incentive Policy and the Local Economy (Upjohn Institute Technical Report No. 13–034, W.E. Upjohn Institute for Employment Research, March 1, 2018), available at: *https://research.upjohn.org/up_technicalreports/34/*; Cailin Slattery and Owen Zidar, Evaluating State and Local Business Tax Incentives, Journal of Economic Perspectives 34, no. 2 (2020): 90–118, available at: *https://www.aeaweb.org/articles?id=10.1257/jep.34.2.90*; Kenneth Thomas, The State of State and Local Subsidies to Business (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, October 2019), available at: *https://www.mercatus.org/system/files/thomas_-_policy_brief_-_the_state_of_state_and_local_subsidies_to_business_-_v1.pdf*; Dennis Coates, Growth Effects of Sports Franchises, Stadiums, and Arenas: 15 Years Later (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2015), available at: *https://www.mercatus.org/system/files/Coates-Sports-Franchises.pdf*; Dennis Coates and Brad R. Humphreys, Do Economists Reach a Conclusion on Subsidies for Sports Franchises, Stadiums, and Mega-Events?, Econ Journal Watch 5, no. 3 (2008): 294–315, available at: *https://econjwatch.org/articles/do-economists-reach-a-conclusion-on-subsidies-for-sports-franchises-stadiums-and-mega-events*; Matthew D. Mitchell, Daniel Sutter, and Scott Eastman, The Political Economy of Targeted Economic Development Incentives, Review of Regional Studies 48, no. 1 (2018): 1–9, available at: *https://www.mercatus.org/publications/corporate-welfare/political-economy-targeted-economic-development-incentives.*

that have eligible workers who perform essential work.''

Premium pay is designed to compensate workers that, by virtue of their employment, were forced to take on additional burdens and make great personal sacrifices as a result of the COVID–19 pandemic. Premium pay can be thought of as hazard pay by another name.[258]

During the public health emergency, employers' policies on COVID–19-related premium pay or hazard pay have varied widely, with many essential workers not yet compensated for the heightened risks they have faced and continue to face.[259] Many of these workers earn lower wages on average and live in socioeconomically underserved communities as compared to the general population.[260] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[261] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks. As Americans return to work and governments relax certain rules, essential workers will continue to bear the brunt of the risk of maintaining the ongoing operation of vital facilities and services. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities. Premium pay is designed to address the disparity between the critical services provided by and the risks taken by essential workers and the relatively low compensation they tend to receive.

The interim final rule established a three-part framework for recipients seeking to use SLFRF funds for premium pay. First, to receive premium pay one must be an eligible worker. Second, an eligible worker must also perform essential work. Finally, premium pay must respond to workers performing essential work during the COVID–19 public health emergency. Most of the comments received by Treasury pertaining to premium pay related to these three requirements. Comments also addressed the definition of premium pay generally and posed questions regarding premium pay program structuring. This section responds to the comments by addressing the three requirements in turn, then the overall definition of premium pay and, finally, program structure.

Eligible Workers

The ARPA defines ''eligible workers'' as ''those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each . . . [government] may designate as critical to protect the health and wellbeing of [its] residents.'' The interim final rule supplemented this definition by identifying a list of ''essential critical infrastructure sectors'' whose workers are eligible workers, based on the list of sectors in the HEROES Act, a bill introduced in the House of Representatives in 2020 that would have provided premium pay to essential workers.[262] In addition to the critical infrastructure sectors defined in the interim final rule, the chief executive (or equivalent) of a recipient government may designate additional non-public [263] sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdiction.

Public Comment: Treasury received multiple comments on the definition of ''eligible worker'' included in the interim final rule. Many commenters agreed with the definition of eligible worker adopted by Treasury. Other commenters sought clarification about or changes to the definition of eligible worker, including the definition of eligible sectors, the inclusion of government workers in the definition of eligible workers, and the process for designating additional non-public sectors as eligible.

Some commenters asked Treasury to change how it identifies eligible sectors, including suggestions to add to or subtract from the list of eligible sectors. For example, some commenters asked Treasury to consider using Bureau of Labor Statistics (BLS)-Standard Occupational Classifications to identify specific sectors or occupations, in contrast to the approach taken in the interim final rule, which included a mixture of economic sectors, industries, and occupations. Many commenters asked Treasury to explicitly clarify that a particular industry or occupation is covered by the definition of ''essential critical infrastructure sector.'' Some of these commenters represented public employees, *e.g.,* employees of facilities and public works; public utilities; courthouse employees; police, fire, and emergency medical services; and waste and wastewater services. Others were a mixture of public and private sector employees, *e.g.,* coroners and medical examiners; transportation infrastructure (specifically electric vehicle infrastructure and supply equipment); electric utilities, natural gas, and steam supply; and grocery employees. Other commenters requested that Treasury prohibit certain occupations currently included in the eligible workers definition (*e.g.,* police and corrections officers) from receiving premium pay for performance of regular duties.

Commenters also asked Treasury to clarify which government workers are included in the definition of eligible workers. The interim final rule included as an essential critical infrastructure sector, ''any work performed by an employee of a State, local, or Tribal government.'' Some commenters requested that Treasury adopt a definition of eligible worker that includes all employees of the recipient government; however, all public employees of state, local, and Tribal governments are already included in the interim final rule definition of ''eligible worker.'' Commenters asked whether this includes governments that did not receive SLFRF funds (*i.e.,* ''non recipient governments''). Many commenters from Tribal governments requested that the definition of eligible worker, which includes ''any work performed by an employee of a . . . Tribal government,'' also include an employee of a ''Tribal enterprise'' to remove uncertainty regarding which employees are included.

Finally, commenters made suggestions for the process by which the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical. Commenters asked that Treasury adopt a requirement that Treasury must approve or deny any additional non-public sector identified by the chief executive of a recipient government prior to implementation of the recipient's program.

Some commenters asked Treasury to clarify whether their chief executive (or equivalent) could designate particular, and in some cases *all,* employees of the recipient government as eligible for premium pay.

Treasury Response: In the final rule, Treasury will preserve the definition of ''eligible worker'' as it was defined in the interim final rule with minor modifications to clarify that all public

[258] *See* U.S. Department of Labor, *Hazard Pay, https://www.dol.gov/general/topic/wages/hazardpay* (last visited October 18, 2021).

[259] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), *https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.*

[260] McCormack, *supra* note 65.

[261] *Id.*

[262] *See* H.R. 6800, 116th Cong. (2020).

[263] Note that the sectors defined in the interim final rule already include all state, local, and Tribal government employees.

employees of recipient governments are already included in the interim final rule definition of ''eligible worker.'' A more specific eligibility system (*e.g.,* linking eligibility to specific occupational or industry codes) would have provided more certainty but would have been much more rigid. In contrast, the current definition is flexible enough to give recipients the ability to tailor their premium pay programs to meet their needs while ensuring that programs focus on sectors where workers were forced to shoulder substantial risk as a result of the COVID–19 pandemic. Furthermore, the critical infrastructure sectors defined in the interim final rule already include many of the occupations that commenters requested be added. For example, Treasury received many comments from public workers asking to be included in the definition of ''eligible worker'' even though these workers already fall within the scope of ''any work performed by an employee of a State, local, or Tribal government.'' Treasury has clarified in the final rule that the chief executive's discretion to designate additional sectors as critical relates only to ''non-public'' sectors, since all public employees of recipient governments are already included in the definition of ''eligible worker.'' While all such public employees are ''eligible workers'' and the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical, in order to receive premium pay, these workers must still meet the other premium pay requirements (*e.g.,* performing essential work).

Treasury recognizes that the list of ''essential critical infrastructure sectors'' includes both occupations and sectors. Recipients, if uncertain which occupations are included in a critical infrastructure sector, may consult government occupational classifications if helpful but are not required to do so.[264] Furthermore, a recipient government does not need to submit to Treasury for approval its designation of a sector as essential critical infrastructure; rather, Treasury will defer to the reasonable interpretation of the recipient government and the discretion of the recipient's chief executive in making such designations. If a recipient is unsure if a non-public sector is covered by the definition in the final rule,[265] the chief executive (or equivalent) of a recipient government may also identify the non-public sector as critical so long as the chief executive deems the non-public sector necessary to protecting the health and wellbeing of residents. Treasury has, where possible, clarified the definition of ''essential critical infrastructure sectors.'' For instance, Treasury has clarified in the final rule that work performed by an employee of a Tribal government includes an employee of a Tribal enterprise and discussed in this Supplementary Information how a recipient may qualify other non-public sectors as essential critical infrastructure.

Essential Work

The interim final rule defined ''essential work'' as work that (1) is not performed while teleworking from a residence and (2) involves either (i) regular, in-person interactions with patients, the public, or coworkers of the individual that is performing the work or (ii) regular physical handling of items that were handled by, or are to be handled by, patients, the public, or coworkers of the individual that is performing the work. Treasury adopted this definition of essential work to ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work during a pandemic.

Public Comment: Some commenters found the definition unclear and asked Treasury to clarify what constitutes ''essential work.'' Others disagreed with the essential work test altogether, arguing that it forces recipients to distinguish between essential and non-essential employees, which may be difficult to do. Accordingly, these commenters asked Treasury to allow recipients to determine which workers qualify as essential. Treasury also received several requests that specific occupations be explicitly deemed essential, including all public employees, veterinarians, election administrators, detention staff and sheriff's deputies, and employees of utilities, such as electric power, natural gas, steam supply, water supply, and sewage removal.

Several commenters requested that Treasury not distinguish between remote and in-person work or amend the standard so that employees providing essential services would still be eligible even if they worked remotely. Finally, a few commenters requested clarification as to the definition of ''regular'' in-person interactions and whether Treasury could clarify which job functions merit more (or less) premium pay.

Treasury Response: Treasury is maintaining the definition of ''essential work'' in the final rule without modification. The test adopted in the interim final rule was designed to compensate workers facing disproportionate risk due to the pandemic. COVID–19 is transmitted through person-to-person interactions, and therefore, workers with regular in-person interactions are the primary group facing increased health risks. Although COVID–19 is not transmitted primarily by people handling items, such work may present increased risk in certain cases, and the final rule maintains the interim final rule's inclusion of such work in order to give recipient governments the flexibility to include workers performing such work as they determine appropriate. Changing the test as some commenters suggested, *e.g.,* by eliminating the in-person work requirement or allowing recipients to designate which employees are essential, even if not working in person, would no longer focus the program on workers taking on additional health risks and instead allow premium pay to be awarded to individuals who experienced relatively little risk of exposure to COVID–19. To maintain flexibility, Treasury is not defining the term ''regular'' with regard to in-person interactions, allowing recipients to develop programs based on the specific workforce to be served and local circumstances. Generally speaking, however, recipients are encouraged to consider an eligible worker's risk of exposure in designing premium pay programs.

Respond To

As required by the ARPA, the interim final rule required that premium pay programs ''respond to'' eligible workers performing essential work during the COVID–19 public health emergency. Premium pay responds to eligible workers performing essential work if it prioritizes low- and moderate-income persons, given the significant share of essential workers that are low- and moderate-income and may be least able to bear added costs associated with illness. The level of the award limit—up to $13 per hour not to exceed $25,000 in aggregate—in the ARPA supports this reasoning.

Accordingly, the interim final rule required written justification for how premium pay to certain higher-income workers responds to eligible workers performing essential work: If a recipient

[264] *See, e.g.,* sources such as Bureau of Labor Statistics, Occupational Outlook Handbook, which provide information on which professions or occupations are typically included in interpretations of a sector, *https://www.bls.gov/ooh/.*

[265] Public sector workers are ''eligible workers'' under the interim final rule and final rule.

(or grantee) uses SLFRF funds to provide premium pay to an employee and the pay or grant would increase a worker's total pay above 150 percent of their residing state or county's average annual wage for all occupations, as defined by the BLS Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, then the recipient must provide, whether for themselves or on behalf of a grantee, written justification to Treasury detailing how the award responds to eligible workers performing essential work.

Public Comment: Treasury received numerous comments on the wage threshold and the written justification requirement. Several commenters supported the threshold as a way to encourage recipients to target premium pay to lower-income, eligible workers. Some commenters even asked Treasury to make the wage threshold a firm restriction, above which an eligible worker could not receive premium pay. Others agreed with the threshold but also requested flexibility to use existing worker classifications as an administratively simple way to identify workers for whom premium pay would be responsive. For instance, a few commenters asked Treasury to allow recipients or grantees to presume that premium pay ''responds to'' eligible workers performing essential work when it is provided to employees who are not exempt from the Fair Labor Standards Act (FLSA) overtime provisions—a test that employers are routinely required to apply.[266]

In contrast, several commenters disagreed with the threshold and the requirement for written justification. A few commenters thought the threshold was too low to capture employees in certain critical infrastructure sectors (*e.g.,* public safety, waste collection) and that it did not sufficiently account for the variance in economic need across different geographic areas and family structures. Some smaller communities argued that the threshold was difficult to calculate and apply.

Other commenters proposed revisions for how the threshold is calculated. For instance, a few commenters asked Treasury to consider using alternative earnings measures such as median income. Similarly, another commenter asked Treasury to consider the incomes of workers with different levels of seniority in developing any income thresholds for permitting or reporting on premium pay.

Finally, there was also some uncertainty as to the threshold and the requirement for written justification. Some commenters interpreted the threshold as a hard cap on who was eligible for premium pay, which is not the case. Relatedly, some commenters also requested further guidance on what recipients should include in the written justification submitted to the Secretary.

Treasury Response: The final rule makes some modifications to the determination of when premium pay ''responds to'' eligible workers performing essential work during the public health emergency. Under the interim final rule, premium pay was responsive if either the workers' pay was below a wage threshold or, if the pay was above a wage threshold, the recipient submitted written justification to Treasury explaining how the premium pay was responsive. The final rule retains these two means of establishing premium pay in response to workers performing essential work and adds an additional means of demonstrating that premium pay is responsive. Under the final rule, a recipient may also show that premium pay is responsive by demonstrating that the eligible worker receiving premium pay is not exempt from the FLSA overtime provisions.[267] This change will expand the number of workers eligible to receive premium pay [268] and does not require recipients to provide written justification to Treasury regarding the workers who are not exempt from the FLSA overtime provisions, making the program easier to administer for recipients. Incorporating this change further simplifies application of the final rule for recipients because Treasury understands that most employers, public and private, are familiar with and are routinely required to apply the FLSA.

With this addition, the final rule provides that premium pay is responsive to eligible workers performing essential work during the public health emergency if each eligible worker who receives premium pay falls into one of three categories: (1) The worker's pay is below the wage threshold, (2) the worker is not exempt from the FLSA overtime provisions, or (3) the recipient has submitted a written justification to Treasury.

The final rule makes it clear that written justification to Treasury is not necessary with respect to eligible workers whose pay is less than the wage threshold. Nor is written justification necessary with respect to eligible workers who are not exempt from the FLSA overtime provisions. The written justification is only necessary if the worker's pay (with or without the premium) exceeds the threshold, *and* the worker is exempt from the FLSA overtime provisions. The final rule also clarifies that a worker's pay exceeds the threshold if either the premium pay increases the worker's total pay above the wage threshold or the worker's total pay was already above the threshold, before receiving premium pay.

Treasury has also updated the final rule to clarify that written justification means a brief, written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the workers' higher income.

Recipients should refer to SLFRF program reporting guidance, user guides, and other documentation for further guidance on the form and content of the written justification. Treasury anticipates that recipients will easily be able to satisfy the justification requirement for front-line workers, like nurses and hospital staff.

Definition of Premium Pay

The statute defines premium pay as ''an amount of up to $13 per hour . . . , in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker.'' The interim

[266] *See generally* 29 U.S.C. 207(a); U.S. Department of Labor, Overtime Pay Requirements of the FLSA (Fact Sheet No. 23), *https://www.dol.gov/agencies/whd/fact-sheets/23-flsa-overtime-pay.*

[267] Department of Labor, Overtime Pay, *https://www.dol.gov/agencies/whd/overtime; see also* 29 U.S.C. 207.

[268] Among workers that report working overtime, roughly 41–44 percent of workers earn above $50,000 per year, which is slightly less than the national average annual wage for all employees according to the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, available at *https://www.bls.gov/oes/.* See also U.S. Census Bureau, Basic Monthly CPS, January 2019 through December 2019, available at *https://www.census.gov/data/datasets/time-series/demo/cps/cps-basic.html.* Notes: Annual earnings reflect weekly wages multiplied by 52. Usual weekly earnings are computed by BLS to include earnings from work such as tips, overtime, regular wages, etc., but not non-labor sources of income such as government transfers and capital gains. Pre-overtime earnings are computed by taking the difference of usual weekly earnings and earnings from overtime last week and multiplying by 52. Note, some sources multiply weekly earnings by 50 instead of 52 to account for unpaid time off and holidays, so these figures may be slightly larger than those reported elsewhere. Either assumption may overestimate earnings if workers do not work year-round.

final rule incorporated this definition and emphasized that premium pay should be in addition to compensation typically received.

Public Comment: Several submitted comments related to the definition of ''premium pay.'' Several commenters asked Treasury to clarify certain aspects of the interim final rule and statutory definition of premium pay. For instance, a few commenters asked whether the $25,000 limit applies to the annual amount of premium pay received or the aggregate amount of premium pay received over the period of performance. A few commenters requested flexibility as to how premium pay may be awarded, including flexibility to make monthly or quarterly payments or lump sum payments. Finally, commenters requested additional clarification as to how premium pay should be calculated. For instance, a commenter asked how to calculate the amount of and account for overtime pay and other incentive pay.[269]

Treasury Response: Treasury has clarified some of these issues in the final rule. For example, Treasury has clarified in the final rule that the $25,000 per employee limit is for the entire period of performance, not an annual cap. Further, recipients have discretion with respect to the way in which premium pay is awarded to eligible workers (*e.g.,* monthly, quarterly, lump sum), provided that the total premium pay awarded to any eligible worker does not exceed $13 per hour or $25,000 over the period of performance. Finally, a recipient may award premium pay to an eligible worker in addition to the overtime pay already earned by the eligible worker but in no instance may the portion of the compensation funded with SLFRF funds exceed $13 per hour, even if strict time-and-a-half calculation requires more.[270] To the extent that an employer is required under the FLSA to make payments to an eligible worker in excess of $13 per hour or $25,000 in the aggregate over the period of performance, the employer must use a source of funding other than the SLFRF funds to satisfy those obligations.

Program Structure

Public Comment: Several commenters also requested elaboration on eligible types of employees and permissible structures for awarding premium pay. A few commenters asked if premium pay could be awarded to volunteers or those in irregular and non-hourly or salaried employment positions. Similarly, various commenters asked if part-time workers were eligible for premium pay.

Some commenters asked Treasury to provide more detail on when premium pay may be paid retroactively or if a government could reimburse its general fund for hazard pay already paid before the start of the period of performance.

Treasury Response: Treasury has also made clear in the final rule that a recipient may award premium pay to non-hourly or salaried workers as well as part-time workers. Premium pay may not, however, be awarded to volunteers. If a recipient is interested in compensating volunteers with SLFRF funds, then it must do so consistent with the requirements set forth in other eligible use categories; for example, see section Public Sector Capacity and Workforce in Public Health and Negative Economic Impacts.

Under the final rule, recipients may award premium pay retroactively; however, SLFRF funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee. To make retroactive premium payments funded with SLFRF funds, a recipient or eligible employer grantee must make a new cash outlay for the premium payments and the payments must be in addition to any wages or remuneration the eligible worker already received, subject to the other requirements and limitations set forth in the ARPA and this final rule.

Finally, as part of accepting the Award Terms and Conditions for SLFRF, each recipient agreed to maintain a conflict-of-interest policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the SLFRF award. This award term requires recipients and subrecipients to report to Treasury or the pass-through agency, as appropriate, any potential conflict of interest related to the award funds per 2 CFR 200.112. Pursuant to this policy, decisions concerning SLFRF funds must be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance. Consistent with this policy, elected officials are prohibited from using their official position and control over SLFRF funds for their own private gain. This policy also prohibits, among other things, elected officials from steering funds to projects in which they have a financial interest or using funds to pay themselves premium pay.

C. Revenue Loss

Background

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' This provision allows recipients experiencing budget shortfalls to use payments from the SLFRF funds to avoid cuts to government services and, thus, enables state, local, and Tribal governments to continue to provide valuable services and ensures that fiscal austerity measures do not hamper the broader economic recovery.

State and local government budgets experienced stress in fiscal year 2020 as delayed tax filings and pandemic-related business closures caused revenues to decline sharply.[271] Twenty-two state governments took actions to close budget gaps in fiscal year 2020[272] and nearly 80 percent of cities reported being less able to meet the fiscal needs of their communities relative to fiscal year 2019.[273] Surveys of Tribal governments and Tribal enterprises conducted in 2020 found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in health care, housing, social services, and economic development activities as a result of reduced revenues.[274]

The economic recovery, aided by the broad distribution of COVID–19 vaccines and the deployment of federal stimulus, has led to a strong rebound in total state and local government revenue and is contributing to a brighter fiscal

[269] *See* 29 U.S.C. 207(a) (''[A]t a rate not less than one and one-half times the regular rate at which he is employed.'').

[270] All recipients are required to comply with otherwise applicable laws, including any wage and hour requirements in the Fair Labor Standards Act. *See generally,* Department of Labor, *Wages and the Fair Labor Standards Act, https://www.dol.gov/agencies/whd/flsa.*

[271] In the second quarter of 2020, quarterly state and local tax revenues as reported by the U.S. Census Bureau fell 19 percent compared to the second quarter of 2019; U.S. Census Bureau, Quarterly Summary of State and Local Tax Revenue, *https://www.census.gov/programs-surveys/qtax.html.*

[272] National Association of State Budget Officers, Fiscal Survey of the States (Fall 2020), *available at https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Fiscal%20Survey/NASBO_Fall_2020_Fiscal_Survey_of_States_S.pdf.*

[273] National League of Cities, City Fiscal Conditions (2020), available at *https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf.*

[274] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID–19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2020), *https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.*

outlook for most jurisdictions as compared to the earlier months of the public health emergency. For the fiscal year ending June 30, 2021, total state and local government tax revenues increased 21 percent relative to the same period in 2020, reflecting the combined impact of the modified tax filing deadline in 2020 and an improving economy.[275] However, despite a stable budget situation overall, many governments face uncertainty as the COVID–19 pandemic continues to impact commuting patterns, hospitality and tourism, and other drivers of jurisdictions' economies. Thirty-five percent of cities still report being less able to meet financial needs than in fiscal year 2020,[276] and over half of surveyed Tribal governments and Tribal enterprises reported losing at least 40 percent of their revenue since the start of the pandemic.[277] Budget challenges persist as governments work to mitigate and contain COVID–19 and help citizens weather the economic downturn.

State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007–2009 recession, state and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[278] Inflation-adjusted state and local government revenue did not return to the previous peak until 2013,[279] while employment in the sector returned to the previous peak in August 2019, nearly a decade later.[280] Just months after recouping losses from the previous downturn, the COVID–19 pandemic caused state and local government employment to contract again, but this time more sharply: By May 2020, state and local government payrolls fell 7.7 percent compared to February 2020. Despite improvement, non-federal public sector job growth continues to lag behind the rest of the U.S. labor market recovery.[281]

Summary of Interim Final Rule

As stated above, the Social Security Act provides that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' The interim final rule provided a formula for calculating revenue loss through a four-step process:

- *Step 1:* Identify revenues collected in the most recent full fiscal year prior to the public health emergency (*i.e.,* last full fiscal year before January 27, 2020), called the *base year revenue*.
- *Step 2:* Estimate *counterfactual revenue,* which is the amount of revenue the recipient would have expected in the absence of the downturn caused by the pandemic. The counterfactual revenue is equal to *base year revenue* * [(1 + *growth adjustment*) ∧ (*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of the average annual growth rate across all State and Local Government ''General Revenue from Own Sources'' in the most recent three years prior to the emergency, 5.2 percent, or the recipient's average annual revenue growth in the three full fiscal years prior to the COVID–19 public health emergency.[282] This approach to the growth rate provides recipients with the option to use a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID–19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.
- *Step 3:* Identify *actual revenue,*[283] which equals revenues collected over the twelve months immediately preceding the calculation date.
- *Step 4:* The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If *actual revenue* exceeds *counterfactual revenue,* the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100 (Step 1) that ends on June 30, 2019. In Step 2, the hypothetical recipient finds that the average annual growth across all state and local government ''General Revenue from Own Sources'' in the most recent three years of available data, 5.2 percent, is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	107.9	113.5	119.4	125.6

[275] Analysis of Quarterly Summary of State and Local Tax Revenue, U.S. Census Bureau, supra note 271.

[276] National League of Cities, City Fiscal Conditions (2021), *available at https://www.nlc.org/wp-content/uploads/2021/10/2021-City-Fiscal-Conditions-Report-2021.pdf*.

[277] Center for Indian Country Development and Federal Reserve Bank of Minneapolis, One Year Into COVID–19, Pandemic's Negative Effects Persist in Indian Country (May 2021), *available at https://www.minneapolisfed.org/article/2021/one-year-into-covid-19-pandemics-negative-effects-persist-in-indian-country*.

[278] *See, e.g.,* Nora Fitzpatrick et al., Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), *https://libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html*; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), available at *https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf*; Gordon, supra note 16.

[279] State and local government general revenue from own sources, adjusted for inflation using the Bureau of Economic Analysis' implicit price deflator for GDP. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts, *https://www.census.gov/programs-surveys/gov-finances.html*.

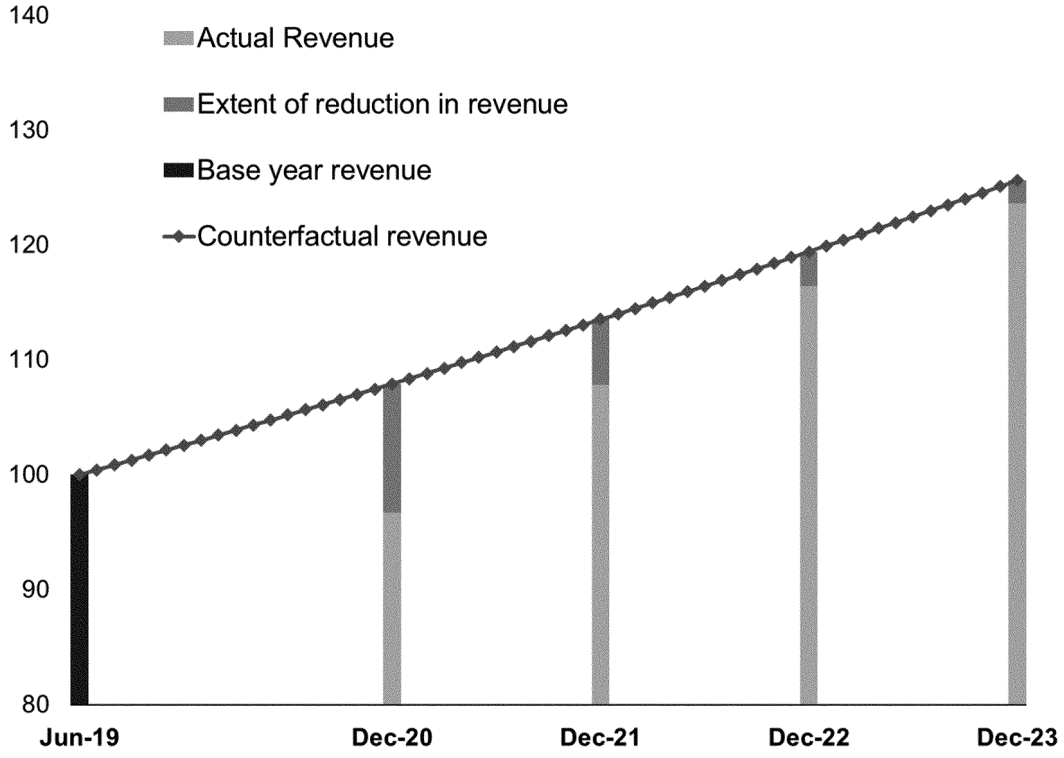
[280] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, *https://fred.stlouisfed.org/series/CES9092000001* and *https://fred.stlouisfed.org/series/CES9093000001*.

[281] Pew Research, State and Local Government Job Growth Lags as Economy Recovers (September 2021), *available at https://www.pewtrusts.org/en/research-and-analysis/articles/2021/09/14/state-and-local-government-job-growth-lags-as-economy-recovers*.

[282] At the time the interim final rule was published, the average annual growth across all state and local government ''General Revenue from Own Sources'' in the most recent three years of available data (2015–2018) was 4.1%, which was presented as one option for the growth adjustment. Since the interim final rule was published, 2019 data has been made available, which increases this rate to 5.2%. The final rule updates the percentage to 5.2%, as shown in Step 2.

[283] As explained below, in the final rule, recipients must adjust actual revenue amounts based on certain tax policy changes.

The figure below illustrates the reduction in revenue for the hypothetical recipient calculated in accordance with the methodology.



Finally, as explained in greater detail below, the clear meaning of the statutory phrase ''due to the COVID–19 public health emergency'' is that it is referring to revenue reductions caused by the public health emergency. As such, it does not include revenue reduced for reasons other than the public health emergency. Treasury in the interim final rule presumed that any reduction in revenue relative to the counterfactual estimate would be considered revenue lost due to the pandemic and thereby relieved recipients of the administrative burden of determining the extent to which reduction in revenue was due to the public health emergency. The calculation methodology in the interim final rule implicitly assumed that recipients did not suffer a loss in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue compared to the counterfactual estimate. The interim final rule invited comments on whether Treasury should revise its presumption to ''take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are 'due to' the COVID–19 public health emergency.''

Treasury received a substantial number of comments on the revenue loss provisions set forth in the interim final rule. These comments largely pertained to the following topics: The overall methodology for calculating revenue loss; the definition of ''revenue''; whether revenue should be aggregated or calculated on some alternative basis (*e.g.,* source-by-source or fund-by-fund); the appropriate calculation dates (*i.e.,* fiscal year or calendar year); the presumption that all revenue loss is due to the pandemic; the base year; and the definition of ''government services.''

Overall Methodology for Calculating Revenue Loss

As noted above, the interim final rule provided a formula for recipients to calculate revenue loss by comparing actual revenues received during a given time-period with a counterfactual amount of revenue based on revenues in the base year and an adjustment for expected growth in revenue each year.

Public Comment: Treasury received many public comments on the overall methodology for calculating revenue loss. Some recipients, including smaller governments, have expressed concern regarding the burden associated with the calculation of revenue loss, particularly the burden involved in calculating the amount of general revenue, given that the definition of general revenue in the interim final rule does not always align with the definition of revenue already calculated by recipients for other purposes, and requested clarifications regarding a number of components, including the definition of revenue. Commenters also asked for clarification on the relationship between revenue loss calculations across different calculation dates. Other commenters argued that the revenue loss formula does not precisely capture the nuances of local revenues or their particular situation. For example, some commenters stated that requiring that revenues be aggregated fails to capture decreases in revenue sources that cannot easily be made up for with other revenue sources.

Treasury Response: In the final rule, Treasury is largely maintaining the revenue loss formula as set forth in the interim final rule. To address comments that the formula for calculating revenue loss was difficult to apply, Treasury is including an option for recipients to use a standard allowance for revenue loss. Specifically, in the final rule, recipients will be permitted to elect a fixed amount of loss that can then be used to fund government services. This fixed

amount, referred to as the ''standard allowance,'' is set at up to $10 million total for the entire period of performance not to exceed the recipient's SLFRF award amount. Although Treasury anticipates that this standard allowance will be most helpful to smaller local governments and Tribal governments, any recipient can use this standard allowance instead of calculating revenue loss pursuant to the formula above, so long as recipients employ a consistent methodology across the period of performance (*i.e.,* choose either the standard allowance or the regular formula). Treasury intends to amend its reporting forms to provide a mechanism for recipients to make a one-time, irrevocable election to utilize either the revenue loss formula or the standard allowance.

The $10 million level is based on average revenue loss across state and local governments, taking into consideration potential variation in revenue types and losses and continued uncertainty faced by many recipients regarding revenue shortfalls. To calculate this estimate, Treasury applied a variation of the final rule's revenue loss calculation on available aggregate state and local government tax revenue data as reported by the Census Bureau for the first calculation date of December 31, 2020. This estimate accounts for expected variation across recipient experiences and reflects the fact that the final rule revenue loss calculation provides recipients several options for specific aspects (*e.g.,* calendar year or fiscal year basis; use of average state and local revenue growth rate or specific local rate). Treasury compared actual calendar year 2020 tax revenues, in aggregate for all state and local governments, to several counterfactual trends that vary based on the end date of the fiscal base year.[284] Treasury also assessed counterfactual trends using different revenue growth rates (*e.g.,* the three-year average growth rates of total state and local government general revenue for both fiscal years ending in 2016–2018 and fiscal years ending in 2017–2019; the three-year average growth rates of total state and local government tax revenues for fiscal years ending in 2017–2019; and the one-year growth rate for total state and local government tax revenue in the last full fiscal year before the public health emergency). To account for the fact that the initial estimate, based on tax revenue, only includes a subset of recipient aggregate general revenue, Treasury applied a scaling factor to recognize that tax revenues generally make up just over half of general revenue collected by state and local governments (*i.e.,* Treasury scaled up its estimate based on tax revenue to produce an estimate for total general revenue).[285] The resulting calculation was then extrapolated over the four-year period of performance and divided by a population of interest to arrive at an average loss estimate.

As noted above, Treasury estimated a range of scenarios to account for different values of the variables that would impact average losses. For example, the end date of the fiscal base year and growth rate of counterfactual revenue impact the overall estimate of revenue loss. In addition, this estimate takes into consideration the limitations in the available data. The governments covered by the Census Bureau's survey do not entirely align with SLFRF recipients. The Census Bureau's figures are based on 50 state governments, all local government property tax collectors and local government non-property tax imposers, representing at a minimum the more than 38,000 ''General Purpose Governments'' defined by Census. However, there are only roughly 32,000 recipients of SLFRF funds. Thus, Treasury considered the difference between the number and type of entities in the Census Bureau data and the SLFRF recipients.

Based on this methodology, Treasury estimates that average revenue loss (determined by comparing the counterfactual revenue to actual revenue) may range from $0 to $11.7 million per recipient over the period of performance.[286] Treasury settled on a point estimate toward the upper end of the range of potential averages, in part, to account for significant variation in the experiences of recipient governments: Some recipients likely experienced losses at the upper end of this range of potential averages. A point estimate toward the upper end of the range errs toward ensuring more recipients' experiences are covered and increases the utility of the standard allowance for SLFRF recipients. Specifically, the program includes a very large number of recipients with relatively smaller awards; these recipients have tended to describe having greater difficulty completing the regular revenue loss calculation. Thus, selecting a point estimate toward the higher end of the expected range not only increases the likelihood that the standard allowance will reflect the experience of a larger number of SLFRF recipients but is more responsive to the comments of those with smaller awards. In addition, using a point estimate toward the upper end of the range accounts for the difficulty and uncertainty in predicting revenue losses years into the future, throughout the period of performance.[287]

Finally, Treasury selected a single allowance level, as opposed to varying levels, to further the goals of simplicity, flexibility, and administrability. Furthermore, data limitations make it difficult to distinguish between types of local governments.[288]

General Revenue

The interim final rule adopted a definition of ''general revenue'' based largely on the components reported under ''General Revenue from Own Sources'' in the Census Bureau's Annual Survey of State and Local Government Finances. Under the interim final rule, general revenue included revenue collected by a recipient and generated from its underlying economy, and it would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[289] Specifically, revenue under the interim final rule included money that is received from tax revenue, current charges, and miscellaneous general revenues and excluded refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, revenue from utilities, social insurance trust revenues, and intergovernmental

[284] Because the Census Bureau's state and local government tax revenue data is reported on a quarterly frequency, fiscal base year end dates of March 31, June 30, September 30, and December 31 were used in this assessment.

[285] Annual Survey of State and Local Government Finances (2019).

[286] This is the range of averages that Treasury calculated by varying the aforementioned assumptions.

[287] See, *e.g.,* Government Accountability Office, State and Local Governments: Fiscal Conditions During the COVID–19 Pandemic in Selected States (July 2021) (noting that ''[s]tate and local government revenues partly depend on the overall economy, and actions to stem the spread of the virus drastically reduced economic activity.''); Board of Governors of the Federal Reserve System, Monetary Policy Report (July 9, 2021) (noting that the pandemic ''pushed down state and local government tax collections'' and that while some of the drag is ''abating'' state and local ''government payrolls . . . have only edged up from their lows at the onset of the pandemic'').

[288] Local government tax revenue data in the Census Bureau's Quarterly Summary of State and Local Tax Revenue, *supra* note 271, is provided on an aggregated basis.

[289] The Department also released guidance clarifying how a recipient may determine whether a particular entity is ''part of the recipient's government.'' *See FAQ 3.14.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

transfers from the federal government, including transfers made pursuant to section 9901 of the ARPA.[290] In the case of Tribal governments, it also included revenue from Tribal business enterprises.

Public Comment: Many commenters asked Treasury to include certain items in the definition of ''general revenue.'' For instance, several commenters that operate their own utilities asked that revenue from utilities be included, arguing that declines in utility revenue directly affect contributions to their general funds. Many of these commenters noted that moratoriums on utility shutoffs and a decline in collections have resulted in significant budgetary pressures.

Some commenters also asked for the exclusion of certain intergovernmental transfers in the definition of general revenue, including transfers of shared revenue from the state.[291] Other commenters asked for the inclusion of certain transfers from the federal government, including fees paid for services and grants that are, in effect, paid for the provision of services.

Treasury also received multiple requests to include revenue from Tribal enterprises in the definition of ''general revenue'' and that ''Tribal enterprise'' be defined broadly. Others asked for the ability to choose whether to include revenue from Tribal enterprises.

Finally, some commenters requested that the definition of general revenue exclude certain sources of revenue, such as revenue sources that do not support a general fund (*i.e.,* revenue sources that are restricted in use). Commenters also asked that general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property.

Treasury Response: In the final rule, Treasury has maintained the definition of ''general revenue'' from the interim final rule with two exceptions.

Treasury has adjusted the definition to allow recipients that operate utilities that are part of their own government to choose whether to include revenue from these utilities in their revenue loss calculation. This change responds to comments from recipients indicating that revenue from utilities is used to fund other government services and that utility revenues have declined on aggregate.[292] This approach is consistent with other eligible uses, which recognize decreased ability of many households to make utility payments; see section Assistance to Households, which identifies utility assistance as an enumerated eligible use of funds, including through direct or bulk payments to utilities for consumer assistance. Furthermore, for utilities or other entities (*e.g.,* certain service districts) that are not part of the recipient government, a transfer from the utility to the recipient constitutes an intergovernmental transfer and therefore is included in the definition of ''general revenue.'' [293]

Treasury has also added liquor store revenue to the definition of general revenue. The Supplemental Information to the interim final rule stated that the definition of tax revenue would include liquor store revenue, but the text of the rule did not include it. Accordingly, in the final rule, Treasury is clarifying that revenue includes liquor store revenue. However, Treasury believes revenue from government-owned liquor stores is better classified as general revenue than it is as tax revenue, so the final rule includes it as part of general revenue.

In response to requests that the definition of general revenue exclude revenue from special assessments, settlements that make the recipient whole for past expenditures, and one-time revenues such as revenue from the sale of property, Treasury is maintaining its position in the final rule that such revenue is included in general revenue. While such revenues may be less predictable than other sources of revenue (*e.g.,* property taxes), these are not uncommon sources of revenue for recipients, and their inclusion provides a more complete view of the financial health of a recipient government and is consistent with the Census Bureau methodology. Treasury is also maintaining the exclusion of all payments from the federal government (including payments for services) from general revenue in order to avoid substantial dilution of the definition of revenue, particularly in light of extraordinary fiscal support provided during the pandemic. Treasury is maintaining the inclusion of intergovernmental transfers other than from the federal government for the reasons provided in the Supplemental Information to the interim final rule; to do otherwise would be to significantly distort the revenue calculations for local governments that regularly receive revenue sharing payments, for example, from their state governments. Treasury is also maintaining the approach that ''general revenue'' includes revenue from Tribal enterprises. This approach recognizes that these enterprises often form the revenue base for Tribal governments' budgets.

To ease the burden on recipients and account for anomalous variations in revenue, as mentioned above, Treasury has incorporated a ''standard allowance'' option into the final rule. A recipient may choose to use the standard allowance, which under the final rule is set at up to $10 million, not to exceed the recipient's SLFRF award amount, as an alternative to calculating revenue loss according to the formula described above. This addition will promote administrative efficiency and simplify the revenue loss calculation for the vast majority of recipients. Treasury intends to amend its reporting forms to provide a mechanism for recipients to elect to utilize either the revenue loss formula or the standard allowance, in addition to other changes made as part of the final rule.

Aggregate Revenue Loss Calculation

Under the interim final rule, revenue loss was calculated based on aggregate revenues and therefore loss in one type of revenue could be offset by gains in another. The amount of SLFRF funds available to provide government services was based on overall net revenue loss. In the Supplementary Information to the interim final rule, Treasury asked commenters to discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or

[290] The interim final rule stated that ''general revenue'' and ''tax revenue'' excludes refunds and other correcting transactions. Instead of ''excluding'' refunds and other correcting transactions, the Census Bureau methodology upon which those definitions are based provides that general revenue and tax revenue are determined ''net of'' refunds and other correcting transactions. The use of ''excluding'' in the interim final rule is substantively the same as the Census Bureau methodology. However, to be consistent with the terminology used by the Census Bureau, the final rule uses ''net of'' instead of ''excluding.'' Current charges are defined as ''charges imposed for providing current services or for the sale of products in connection with general government activities.'' It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (*i.e.,* other than utility and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

[291] The interim final rule excluded governmental transfers from the Federal Government, but it did not exclude intergovernmental transfers from other governmental units for purposes of the revenue loss provisions.

[292] U.S. Energy Information Administration, Annual Electric Utility Data (October 2021), *available at https://www.eia.gov/electricity/sales_revenue_price/.*

[293] FAQ 3.14 provides further guidance on how to determine what entities constitute a government for purposes of calculating revenue loss. *See* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

appropriate to calculate the reduction in revenue by source.

Public Comment: Treasury received many comments stating that revenue loss should be calculated on a source-by-source basis. Some commenters argued that a source-by-source approach would be administratively simpler. Other commenters argued that calculating revenue loss source-by-source would better reflect the impact of the COVID–19 pandemic on their ability to fund government services because revenue gains in one source cannot always be used to make up for losses in another. For similar reasons, other commenters asked that revenue loss be calculated on a fund basis.

Treasury Response: Treasury considered alternative methods (*e.g.,* source-by-source, fund-by-fund) but ultimately determined to maintain the calculation of revenue loss in the aggregate. The pandemic has had different effects on recipients (and their revenues), and Treasury recognized that one particular type of revenue or one particular source may have experienced a greater amount of loss for some recipients. However, the statute refers only to ''*the* reduction in revenue of such State, local government, or Tribal government.'' The statute is thus clear that Treasury is to refer to the aggregate revenue reduction of the recipient due to the public health emergency. Further, this provision is designed to address declines in the recipients' overall ability to pay for governmental services, and calculating revenue loss on an aggregate basis provides a more accurate representation of the effect of the pandemic on overall revenues and the fiscal health of the recipient. In many circumstances, recipient governments have flexibility to use revenues from an array of sources and offset declines in some sources with gains in others. While the details and configuration of this flexibility vary widely across recipient governments, calculating revenue loss on a source-by-source or fund-by-fund basis would not capture how recipient governments balance their budgets in the regular course of business. Accordingly, the final rule maintains the requirement that revenue loss is to be calculated on an aggregate basis.

Calculation Dates

Public Comment: Under the interim final rule, recipients calculate revenue loss as of the end of the calendar year. Treasury received many comments requesting that recipients be permitted to calculate revenue loss as of the end of their fiscal year. Commenters argued that doing so would be simpler and less burdensome on recipients and that financial data as of the end of the fiscal year is audited and therefore more reliable. Commenters also argued that recipients' fiscal years are structured around the timing of major revenue sources, and that the Census Bureau uses fiscal years in its Annual Survey.

Treasury also received comments about the use of multiple calculation dates. Several Tribal governments stated that they would not see ongoing revenue losses due to the COVID–19 public health emergency and asked to be able to determine revenue loss as of the first calculation date. Several commenters asked whether revenue loss is determined independently for each year, so that a gain in one year does not offset a loss in another, or whether revenue loss is cumulative from the beginning of the pandemic.

Treasury Response: In the final rule, Treasury has made adjustments to give recipients more flexibility with respect to calculation dates and to clarify certain elements. Specifically, the final rule provides recipients the option to choose whether to calculate revenue loss on a fiscal year or calendar year basis, though they must choose a consistent basis for loss calculations throughout the period of performance. Treasury has also clarified in the final rule that revenue loss is calculated separately for each year such that the calculation of revenue lost in one year does not affect the calculation of revenue lost in prior or future years.

Presumption That Revenue Loss Is Due to the Pandemic

As stated above, sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act provide that SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue of such . . . government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the . . . government prior to the emergency.'' As discussed in the interim final rule, although revenue may decline for reasons unrelated to COVID–19, in order to minimize the administrative burden on recipients in calculating revenue loss and take into consideration the devastating effects of the COVID–19 public health emergency, any reduction in revenue relative to the counterfactual estimate was presumed in the interim final rule to be considered revenue lost due to the pandemic.

Treasury stated in the Supplementary Information to the interim final rule that it was considering when, if ever, during the period of performance it would be appropriate to reevaluate the presumption that all losses are attributable to the public health emergency. Treasury also sought comment on whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID–19 public health emergency, in determining whether to presume that revenue losses are ''due to'' the COVID–19 public health emergency.

Public Comment: Treasury received many comments in support of the presumption, as well as some opposed. Some commenters argued that the presumption eases the administrative burden on recipients because, without it, it would be difficult to identify which losses are attributable to the COVID–19 public health emergency. Many commenters also argued that Treasury should maintain the presumption because recipients are likely to experience losses due to the public health emergency even after the end of the public health emergency. Treasury also received comments asking that it adjust any revenue loss calculation to account for tax changes enacted by the recipient. In particular, some commenters noted that some recipients had increased taxes in order to meet additional demands for government services or to address declines in revenue due to the pandemic. These tax increases have in some cases offset some or all of the actual revenue loss attributable to the public health emergency. Because the interim final rule calculates revenue loss by reference to actual revenue collected, commenters argued that the calculation of revenue loss ''due to'' the public health emergency needs to take into consideration the effects of tax increases by deducting the effect of these tax increases from actual revenue collected.

Treasury Response: In the final rule, Treasury has maintained the presumption that a reduction in a recipient's revenue is due to the public health emergency with certain adjustments to respond to comments and to better account for revenue loss ''due to the COVID–19 public health emergency.'' The final rule makes adjustments to the presumption to take into account certain government actions to change tax policy. In particular, Treasury is adjusting the presumption to account for changes to tax policy by providing that changes in revenue that are caused by tax increases or decreases adopted after the issuance of the final rule will not be treated as due to the public health emergency.

Presumption of Revenue Loss ''Due To'' the Pandemic

In enacting sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, Congress provided that a state, local government, or Tribal government could use funds to ''cover costs . . . for the provision of government services,'' but only ''to the extent of the reduction in revenue . . . due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year . . . prior to the emergency.'' In doing so, Congress recognized that the pandemic was causing significant disruption to economic activity and sought to minimize the impact of associated revenue losses on the ability of the recipient to provide government services when such services were needed most.[294] The text of the statute itself reinforces this important context: The law specifically limits funds to cover revenue losses that both are ''due to the COVID–19 public health emergency'' and could impact ''the provision of government services.''

Courts have recognized that the phrase ''due to'' can refer to various causal standards.[295] Here, in the context of Congress's addressing economic disruptions caused by the COVID–19 pandemic that could impact both revenues and government services, the key consideration is whether a revenue loss experienced by the recipient resulted from the exogenous impacts of the public health emergency (and were thus ''due to'' the pandemic) or instead from the recipient's own discretionary actions (and, in this context, were not ''due to'' the pandemic). Reductions in revenue due to the public health emergency does not cover revenue reductions that resulted from a recipient's own discretionary actions.

In the interim final rule, Treasury included a presumption that all revenue loss is due to the pandemic in order to minimize the administrative burden on recipients discussed above and take into consideration the devastating effects of the COVID–19 public health emergency. Based on comments, Treasury believes that the reasons for the presumption continue to be valid and has determined to maintain the presumption in the final rule with certain modifications. In particular, at this point in the course of the pandemic, with the fiscal pressure on state and local governments having been significantly reduced, it is appropriate for Treasury to reassess aspects of this presumption. As discussed below, the final rule requires recipients to exclude the value of tax policy changes adopted after January 6, 2022.

Recipients of the SLFRF range from states to the smallest local governments. At the time that the interim final rule was adopted, it was important for recipients to be able to calculate with ease and certainty their amount of revenue loss so that they could begin deploying these funds to continue to maintain essential government services. To this end, the presumption in the interim final rule provided a relatively simple formula for all recipients to use, but the exigent need for recipients to immediately deploy funds for the provision of government services has decreased and the benefit of the presumption in reducing administrative burden is less relevant for those governments that are not likely to avail themselves of the standard allowance described above.

Consistent with these considerations, the final rule requires recipients to exclude revenue loss due to tax changes adopted after January 6, 2022. Eliminating revenue loss due to tax changes from the presumption is appropriate given the significance of tax revenue as a portion of all revenue for state and local governments, the direct impact of tax policy decisions on revenue collected, and the relative ease with which recipients can isolate the estimated effect of a tax change on revenue.[296] Most state budgeting processes require a ''budget score,'' often developed through a consensus process with executive and legislative branch experts,[297] and Treasury expects that larger localities, those most likely to utilize the revenue loss formula rather than the standard allowance, also regularly use revenue or budget estimates when considering changes to tax policies. As such, in many cases, recipients already prepare estimates of the impact of tax changes on revenue, and as discussed below, Treasury will generally permit recipients to rely on such estimates in adjusting their revenue loss calculations.

Reductions in revenue that are not attributable to tax changes would continue to be subject to the presumption. A requirement that recipients evaluate the revenue effect of changes in discretionary policy actions other than tax changes would be more difficult for recipients than evaluating the changes attributable to tax changes given that state and local governments do not generally prepare estimates of the revenue effects of other actions. Finally, as noted above, taxes are the single largest source of revenue for state and local government recipients in the aggregate.

Revisions to Presumption To Address Tax Reductions

For these reasons, Treasury is providing in the final rule that changes in general revenue that are caused by tax cuts adopted after the date of adoption of the final rule (January 6, 2022) will not be treated as due to the public health emergency, and the estimated fiscal impact of such tax cuts must be added to the calculation of ''actual revenue'' for purposes of calculation dates that occur on or after April 1, 2022. Tax cuts include final legislative or regulatory action or a new or changed administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of reducing tax revenue relative to current law. This includes the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the issuance of the final rule.

In assessing whether a tax change has had the effect of reducing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. More specifically, recipients may rely on information typically prepared in the course of developing the budget (*e.g.,* expected revenues) and/or considering tax changes (*e.g.,* budget scores, revenue notes) to determine the amount of revenue that would have been collected in the absence of the tax cut, as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic

[294] *See also* sections 602(a)(1) and 603(a) of the Social Security Act (appropriating the funds for payment to recipients in order to ''mitigate the fiscal effects stemming from the public health emergency'').

[295] *U.S. Postal Service* v. *Postal Regulatory Comm'n,* 640 F.3d 1263 (D.C. Cir. 2011); *see Kimber* v. *Thiokol Corp.,* 196 F.3d 1092, 1100 (10th Cir. 1999); *Adams* v. *Director, OWCP,* 886 F.2d 818, 821 (6th Cir. 1989).

[296] Treasury considered whether to also eliminate the presumption with respect to losses resulting from other changes in policy, such as decreases in user fees or fines. However, the effects of these changes are more minor overall and would be more challenging to accurately identify and quantify, so the administrability benefit of the presumption for recipients outweighs whatever distortion there might be as a result of not reflecting such changes.

[297] *See generally,* National Association of State Budget Officers, Budget Processes in the States, (2021), available at *https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processess/NASBO_2021_Budget_Processes_in_the_States_S.pdf.*

growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Revisions to Presumption To Address Tax Increases

As noted above, the calculation methodology in the interim final rule implicitly assumed that recipients did not experience a reduction in revenue due to the public health emergency if they did not experience a reduction in aggregate revenue relative to the counterfactual estimate. Treasury recognizes that some recipients may have experienced a reduction in revenue due to the public health emergency that was offset by other revenue, particularly in the case of increases to tax revenue resulting from a tax increase. The final rule requires recipients that increased taxes to deduct the amount of increases to revenue attributable to such tax increase. This change is also consistent with the incorporation in the interim final rule and final rule of a counterfactual growth rate, which effectively permits recipients to count revenue losses due to the public health emergency that are offset by increased tax revenue resulting from organic growth.

For these reasons, Treasury is providing in the final rule that recipients must subtract from their calculation of actual revenue the effect of tax increases adopted after the date of adoption of this final rule (January 6, 2022) for purposes of calculation dates that occur on or after April 1, 2022. This change and the change to the final rule described above treat tax changes in a consistent manner: In the case of reduction in revenue resulting from a tax cut, a recipient must add the amount of that reduction to its calculation of actual revenue, and in the case of an increase in revenue resulting from a tax increase, a recipient must subtract the amount of additional revenue collected as a result of the tax increase from its calculation of actual revenue.[298]

As is the case with tax cuts, discussed above, tax increases that must be reflected in the calculation of revenue include final legislative or regulatory action or a new or changed administrative interpretation that increases any tax and that the recipient assesses has had the effect of increasing tax revenue relative to current law. In assessing whether a tax change has had the effect of increasing tax revenue, recipients may either calculate the actual effect on revenue or rely on estimates prepared at the time the tax change was adopted. Recipients may rely on information typically prepared in the course of developing the budget (*e.g.,* expected revenues) and/or considering tax changes (*e.g.,* budget scores, revenue notes) to determine the amount of revenue that was collected as a result of the tax increase as long as those estimates are based on reasonable assumptions and do not use dynamic methodologies that incorporate the projected effects of macroeconomic growth, given that macroeconomic growth is accounted for in the counterfactual growth assumptions. Recipients that choose to calculate the actual effect of a tax change on revenue must similarly base their calculations on reasonable estimates that do not use dynamic methodologies. Recipients should apply this adjustment in determining their actual revenue totals at Step 3 in the revenue loss calculation described above.

Previously Adopted Tax Changes

As discussed above, the final rule will not require recipients to reflect the revenue effects of tax increases or decreases adopted prior to the adoption of the final rule. Recipients that adopted a tax change in a previous period will not be required to recalculate the amount of revenue loss as of prior calculation dates or to reflect the fiscal impacts of such tax changes in calculation dates after the effective date of the final rule. However, the final rule will permit recipients to elect to reflect the revenue effects of their tax changes adopted between the beginning of the public health emergency and the adoption of the final rule.[299] If a recipient elects to do so, it must do so with respect to all of its tax changes adopted between the beginning of the public health emergency and the adoption of the final rule. Treasury intends to revise its reporting requirements to permit recipients to amend their previously reported calculation periods to reflect such changes.

Determination of the Base Year

Under the ARPA and interim final rule, SLFRF funds may be used ''for the provision of government services to the extent of the reduction in revenue . . . relative to revenues collected in the most recent full fiscal year'' of the recipient. Therefore, the base year for the revenue loss calculation is the most recent full fiscal year prior to the COVID–19 public health emergency.

Public Comment: Treasury received multiple comments asking for flexibility in determining base year revenues. For instance, some commenters asked to use a different base year than the ''most recent full fiscal year'' prior to the pandemic for calculating revenue loss; others asked to be able to average prior years. Commenters stated that, for various reasons, revenue was artificially low in the last full fiscal year prior to the public health emergency, and, therefore, using revenue in that year as the base year did not accurately reflect expected revenue in a normal year. For example, several Tribes stated that unforeseeable weather events resulted in forced closure of casinos which, in turn, artificially deflated revenues in the base year. Other commenters indicated that one-time anomalies in the timing of tax collection in that year artificially pushed revenue into the following fiscal year. Similarly, a few commenters noted that tax changes that took effect in the middle of the base year may artificially skew the size of the revenue loss experienced by the recipient government.

Treasury Response: Treasury understands that recipients may have experienced events in the base year that led to lower or higher revenues than what they otherwise would have collected. The ARPA provides that revenue loss is to be determined with respect to revenue in the most recent full fiscal year prior to the pandemic, and therefore the final rule maintains its incorporation of the statutory definition.

In calculating revenue loss, recipients may use data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period, which might help recipients adjust to certain delays in revenue receipt. Both the standard allowance and elements of the formula (*e.g.,*

[298] The final rule does not permit recipients to reflect the effects of other changes in policy, such as increases in fees adopted after adoption of the final rule. Treasury understands that the main beneficiaries of such a change would be those recipients that will benefit from the standard allowance provided for in the final rule and that for other recipients the administrative burden on recipients needed to calculate these adjustments would outweigh the benefit of having a somewhat larger amount of funds available for government services.

[299] The final rule also addresses the possibility that some recipients may have fiscal years ending during the period between January 6, 2022 and April 1, 2022; such recipients' election to reflect tax changes from prior periods would also apply to changes during this period with respect to the calculation date in this period.

counterfactual growth rate) incorporate generous assumptions to give recipients flexibility and to account for variation among recipients' experiences during the pandemic.

Government Services

The **SUPPLEMENTAL INFORMATION** to the interim final rule provided a non-exhaustive list of examples of services that are government services. The interim final rule also discussed why neither payment of debt service nor replenishing financial reserves constitutes government services, as these expenditures do not provide services but relate to the financing of such services. Similarly, government services under the interim final rule did not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, unless the judgment or settlement required the provision of government services.

Public Comment: Treasury received several comments requesting further clarification regarding the scope of government services, including asking for either a specific definition of government services or that a specific use be expressly deemed to be a government service. Some commenters disagreed with the exclusions from government services in the interim final rule. For instance, many of the comments Treasury received suggested that replenishing reserve funds and at least certain types of debt service should be treated as providing governmental services. Some commenters also suggested that a recipient should be able to use funds for costs incurred before March 3, 2021. Other commenters asked Treasury to maintain the prohibition on using the funds to pay debt service.

Treasury Response: Treasury continues to believe that the lists of activities that either are or are not providing government services are accurate but is clarifying here that, generally speaking, services provided by the recipient governments are ''government services'' under the interim final rule and final rule, unless Treasury has stated otherwise. Government services include, but are not limited to, maintenance or pay-go funded building [300] of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

The aforementioned list of government services is not exclusive. However, recipients should be mindful that other restrictions may apply, including those articulated in the section Restrictions on Use. In the final rule, Treasury is maintaining the limitations on government services included in the interim final rule and has addressed and responded to public commenters on these issues in the section Restrictions on Use.

D. Investments in Water, Sewer, and Broadband Infrastructure

Summary of Interim Final Rule

Under the ARPA, recipients may use funds to make necessary investments in water, sewer, and broadband infrastructure. The interim final rule provided recipients with the ability to use funds for a broad array of uses within these categories.

The interim final rule discussed two general provisions that apply across all water, sewer, and broadband infrastructure investments. First, the interim final rule addressed the meaning of ''necessary'' investments as meaning those designed to provide an adequate minimum level of service and unlikely to be made using private sources of funds. Second, the interim final rule encouraged recipients to use strong labor standards in water, sewer, and broadband projects, as discussed below.

Necessary Investments

The statute limits investments to those that are necessary. As discussed in more detail below, Treasury determined that the types of water and sewer projects that were authorized under the interim final rule by reference to existing Environmental Protection Agency (EPA) programs would in all cases be necessary investments given the conditions applicable to such EPA programs. Similarly, the interim final rule's definition of eligible broadband projects as those designed to provide a certain standard of service to those households and businesses with limited existing service was based on the statutory requirement that investments in water, sewer, and broadband must be ''necessary.''

As discussed further below, Treasury has expanded the scope of what is an eligible water and sewer infrastructure project to include additional uses. In particular, the final rule permits use of SLFRF funds for certain dam and reservoir restoration projects and certain drinking water projects to support population growth. The nature of these additional uses is such that additional factors must be considered in determining whether one of these additional uses is a necessary project. In addition, Treasury recognizes that there may be a need for improvements to broadband beyond those households and businesses with limited existing service as defined in the interim final rule. Treasury has replaced this specific requirement based on an understanding that broadband investments may be necessary for a broader set of reasons.

Given this expansion of what is considered in scope as a water, sewer, or broadband infrastructure project, the final rule provides a further elaboration of Treasury's understanding of the conditions under which an infrastructure project will be considered to be a necessary investment. Treasury considers a necessary investment in infrastructure to be one that is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, given that drinking water is a resource that is subject to depletion, in the case of investments in infrastructure that supply drinking water in order to meet projected population growth, the project must be projected to be sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but still encourages recipients to prioritize projects that would provide the greatest public benefit in their respective jurisdictions.

Strong Labor Standards in Water, Sewer, and Broadband Construction

As stated in the Supplementary Information to the interim final rule, Treasury encourages recipients to carry out investments in water, sewer, or broadband infrastructure in ways that produce high-quality infrastructure, avert disruptive and costly delays, and

[300] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

promote efficiency.[301] Treasury encourages recipients to use strong labor standards, including project labor agreements (PLAs) and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury also recommends that recipients prioritize in their procurement decisions employers who can demonstrate that their workforce meets high safety and training standards (*e.g.,* professional certification, licensure, and/or robust in-house training), that hire local workers and/or workers from historically underserved communities, and who directly employ their workforce or have policies and practices in place to ensure contractors and subcontractors meet high labor standards. Treasury further encourages recipients to prioritize employers (including contractors and subcontractors) without recent violations of federal and state labor and employment laws.

Treasury believes that such practices will promote effective and efficient delivery of high-quality infrastructure projects and support the economic recovery through strong employment opportunities for workers. Such practices will also reduce the likelihood of potential project challenges like work stoppages or safety accidents, while ensuring a reliable supply of skilled labor and minimizing disruptions, such as those associated with labor disputes or workplace injuries. That will, in turn, promote on-time and on-budget delivery.

Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to water, sewer, or broadband infrastructure project that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5).

Treasury will continue to seek information from recipients on their workforce plans and water, sewer, and broadband projects undertaken with SLFRF funds. This reporting will support transparency and competition by enhancing available information on the services being provided. Since publication of the interim final rule, Treasury has provided recipients with additional guidance and instructions on the reporting requirements.[302]

Environmental and Other Generally Applicable Requirements

Treasury cautions that, as is the case with all projects engaged in using the SLFRF funds, all projects must comply with applicable federal, state, and local law. In the case of infrastructure projects in particular, this includes environmental and permitting laws and regulations. Likewise, as with all capital expenditure projects using SLFRF funds, projects must be undertaken and completed in a manner that is technically sound, meaning that they must meet design and construction methods and use materials that are approved, codified, recognized, fall under standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

1. Water and Sewer Infrastructure

Sections 602(c)(1)(D) and Section 603(c)(1)(D) of the Social Security Act provide that recipients may use the SLFRF funds ''to make necessary investments in water [and] sewer . . . infrastructure.'' The interim final rule permitted a broad range of necessary investments in projects that improve access to clean drinking water and improve wastewater and stormwater infrastructure systems. As discussed below, after review of comments received on the interim final rule, Treasury has made changes in the final rule to expand the scope of eligible water and sewer projects.

Summary of Interim Final Rule and Final Rule Structure

Background: In the interim final rule, Treasury aligned eligible uses of the SLFRF with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) administered by the Environmental Protection Agency (EPA). By referring to these existing programs, with which many recipients are already familiar, Treasury intended to provide flexibility to recipients to respond to the needs of their communities while facilitating recipients' identification of eligible projects. Furthermore, by aligning SLFRF eligible uses with these existing programs, Treasury could ensure that projects using the SLFRF are limited to ''necessary investments.''

Public Comment: Treasury received many comments responding to the water and sewer infrastructure provisions of the interim final rule from state, local, and Tribal governments, industry trade associations, public interest groups, private individuals, and other interested parties. Commenters requested that Treasury provide a wider set of eligible uses for water and sewer infrastructure beyond those uses articulated by the DWSRF and CWSRF, suggesting that Treasury expand the definition of necessary water and sewer infrastructure.

Treasury Response: In response to commenters, Treasury is expanding the eligible use categories for water and sewer infrastructure, discussed in further detail below. Because the interim final rule aligned the definition of necessary water and sewer infrastructure with the eligible uses included in the DWSRF and CWSRF, Treasury is reflecting in the final rule a revised standard for determining a necessary water and sewer infrastructure investment for eligible water and sewer uses beyond those uses that are eligible under the DWSRF and CWSRF.

Interpretation of Necessary Investments and Water and Sewer Infrastructure

Necessary Investments: As discussed above, Treasury considers an investment in infrastructure to be necessary if it is (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. In addition, in the case of investments in drinking water service infrastructure to supply drinking water to satisfy a projected increase in population, the project must also be projected to be sustainable over its estimated useful life. As detailed further below, DWSRF and CWSRF eligible projects continue to be presumed to be necessary investments under the final

[301] Treasury received several comments related to its encouragement of certain wage and labor standards in the Supplementary Information to the interim final rule. Some commenters opposed this encouragement, arguing that even encouragement and reference to PLAs and prevailing wage laws could lead to confusion or make it more likely that recipients would apply labor standards in ways that would discourage competition and raise project costs. Conversely, some commenters supported the encouragement of the use of certain standards, including giving preference to employers that meet certain employment standards (*e.g.,* those that maintain high safety and training standards) because it would support the goal of completing water, sewer, and broadband projects efficiently and safely. As in the interim final rule, this encouragement does not impose a legally binding restriction on recipients.

[302] *See* U.S. Department of the Treasury, *Compliance and Reporting Guidance,* 21 (June 24, 2021), *https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.*

rule, with the exception of projects for the rehabilitation of dams and reservoirs, which the EPA has permitted in certain circumstances under the DWSRF and, as discussed below, are addressed separately in the final rule.

In evaluating whether a project would respond to a need to achieve or maintain an adequate minimum level of service, a recipient should consider whether it would meet the needs of the population to be served and would satisfy applicable standards. For example, a drinking water project must be sized such that it provides an adequate volume of water to households and other customers and must meet applicable standards for drinking water quality under the Safe Drinking Water Act (SDWA). Similarly, a centralized wastewater treatment project should be designed to manage updated estimated flow rates and comply with Clean Water Act requirements. These requirements are already reflected in the eligibility criteria of the DWSRF and CWSRF, respectively.

In evaluating whether a project is a cost-effective means of providing the water or sewer service, the recipient should consider the need for the project, the costs and benefits of the project compared to alternatives, and the effectiveness of the project in meeting the identified need. Recipients are not required to conduct a full cost-benefit analysis; however, they should consider and analyze relevant factors. For example, a recipient may not use funds to pursue a costly dam rehabilitation to provide drinking water to a community if it could provide the same service with a significantly smaller investment by drawing water from another available reservoir, assuming that doing so would meet the other requirements of the final rule. As detailed further below, recipients are only required to assess cost-effectiveness of projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs.

Certain DWSRF eligibilities are already subject to a cost-effectiveness test. Specifically, projects that create new drinking water systems must be a cost-effective solution to addressing the identified problem.[303] The EPA also imposes a cost-effectiveness condition on dam and reservoir rehabilitation projects undertaken pursuant to its class deviation from the DWSRF rule. These projects are particularly expensive and, unlike in the case of other types of eligible projects, there are often available alternatives to conducting these projects. Projects for the extension of drinking water service to meet population growth needs are also often particularly expensive, and there are often different ways to meet the needs of expanding populations. Treasury will accordingly require that recipients engage in a cost-effectiveness analysis when engaging in projects for the creation of new drinking water systems, dam and reservoir rehabilitation projects, or projects for the extension of drinking water service to meet population growth needs. Other types of eligible water or sewer projects will not be subject to this cost-effectiveness test, including lead line replacement and lead remediation.[304]

In the case of projects that expand drinking water service infrastructure to satisfy a projected increase in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. For example, a reservoir rehabilitation project may not be pursued if the reservoir will no longer be able to provide an adequate source of drinking water before the end of the estimated useful life of the improvements to the reservoir. In areas currently impacted by drought or where drought conditions are expected to be more frequent or more severe in the future, sources of drinking water may be diminished more quickly than in prior periods. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife.

The final rule applies this sustainability condition to projects that expand drinking water service infrastructure to satisfy a projected increase in population but not to other drinking water projects. When a new source of water is required to remedy an existing threat to public health, as in the case of source projects eligible under the DWSRF, sustainability should be a consideration, but in some cases, the need to replace a contaminated source may mean that a less sustainable choice may be made. When faced with such an issue, such as in the case of a contaminated well system, a project to replace the contaminated source can be said to be ''necessary'' even if the replaced source is not sustainable over the long term. Expediency may dictate that a shorter-term solution is pursued if it is cost-effective and will prevent health issues while a longer-term solution can be found. In contrast, an expansion to accommodate population growth cannot be said to be necessary if it is not sustainable over its estimated useful life.

Not included in the list of criteria above is the requirement in the interim final rule that the project be unlikely to be made using private sources of funds. Given that it may be difficult to assess in a particular case what the probability of private investment in a project would be, Treasury has eliminated this standard from the meaning of necessary but nevertheless encourages recipients to apply funds to projects that would provide the greatest public benefit.

Water and Sewer Infrastructure: As stated above, Congress provided that SLFRF funds are available for ''necessary water, sewer, and broadband infrastructure.'' Treasury interprets the reference to water and sewer uses consistent with the inclusion of broadband uses. Water, sewer, and broadband infrastructure all involve the provision of essential services to residents, businesses, and other consumers. As the pandemic has made clear, access to broadband has itself become essential for individuals and businesses to participate in education, commerce, work, and civic matters and to receive health care and social services.

Water and sewer services provided broadly to the public as essential services include the provision of drinking water and the removal, management, and treatment of wastewater and stormwater.[305] Although governments are engaged in other infrastructure related to water, including irrigation projects, transportation projects, and recreation projects, such projects go beyond the scope of what is provided to all residents as an essential service. Provision of drinking water and removal, management, and treatment of

[303] *See* 40 CFR 35.3520(b)(2)(vi).

[304] In such cases, either the projects are presumptively cost-effective (*e.g.,* lead projects would always be considered cost-effective given the costs imposed by lead poisoning) or a cost-effectiveness test is less relevant given the lack of available alternatives or the relatively low cost of the project.

[305] In many jurisdictions, stormwater flows into the sewer system rather than into a separate stormwater system. The separate inclusion of ''water'' and ''sewer'' infrastructure also makes clear that ''water'' in this context cannot refer to all uses relevant to water. Given that sewer systems carry wastewater (and often stormwater), if water infrastructure were to refer to all water-related infrastructure in this context, it would make the inclusion of sewer infrastructure redundant.

wastewater and stormwater are the typical responsibilities of ''water and sewer'' authorities throughout the country, and there is a tremendous need for improvements to the ability of state, local, and Tribal governments to provide such services, including to address the consequences of deferred maintenance and additional resiliency needed to adapt to changes to the climate.[306]

Although the meaning of water and sewer infrastructure for purposes of sections 602(c)(1)(D) and 603(c)(1)(D) of the Social Security Act does not include all water-related uses, Treasury has made clear in this final rule that investments to infrastructure include a wide variety of projects. Treasury interprets the word ''infrastructure'' in this context broadly to mean the underlying framework or system for achieving the given public purpose, whether it be provision of drinking water or management of wastewater or stormwater.[307] As discussed below, this can include not just storm drains and culverts for the management of stormwater, for example, but also bioretention basins and rain barrels implemented across a watershed, including on both public and private property, that together reduce the amount of runoff that needs to be managed by traditional infrastructure.

Further, Treasury understands that investments in infrastructure include improvements that increase the capacity of existing infrastructure and extend the useful life of existing infrastructure. Accordingly, water and sewer infrastructure investment projects include those that conserve water, thereby reducing pressure on infrastructure for the provision of drinking water, and that recycle wastewater and stormwater, thereby reducing pressure on the infrastructure for treating and managing wastewater and stormwater.

As with other infrastructure projects and capital expenditure projects that are permitted as responses to the public health emergency and its negative economic impacts, costs for planning and design and associated pre-project costs are eligible uses of SLFRF funds. Costs for the acquisition of land are also eligible, but only if needed for the purposes of locating eligible project components. Recipients should ensure that they have the technical, financial, and managerial capability to ensure compliance with the requirements of the SDWA, or that the assistance will ensure compliance and the owners or operators of the systems will undertake feasible and appropriate changes in operations to ensure compliance over the long-term.

Drinking Water State Revolving Fund and Clean Water State Revolving Fund

Background: As stated above, in the interim final rule, Treasury included eligible uses of the DWSRF and the CWSRF as eligible uses of the SLFRF in the water and sewer infrastructure category. By providing that projects eligible under the DWSRF and the CWSRF are also eligible uses of SLFRF funds, the interim final rule permitted a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. With respect to clean water and wastewater infrastructure, the interim final rule provided that recipients may use SLFRF funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, and facilitate water reuse, among other uses. Consistent with the DWSRF and the CWSRF, the interim final rule provided that SLFRF funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Use of DWSRF and CWSRF to Support Climate Change Adaptations. Many of the types of projects eligible under either the DWSRF or CWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and CWSRF may reduce energy required to treat drinking water. Similarly, projects eligible under the DWSRF and CWSRF include measures to conserve and reuse water, for example through projects to reuse or recycle wastewater, stormwater, or subsurface drainage water. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include bioretention basins that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use SLFRF funds for water infrastructure to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Public Comment: Many commenters expressed support for the interim final rule's alignment of the use of funds for water and sewer infrastructure under the SLFRF with the project categories provided through the EPA's DWSRF and CWSRF programs.

Many commenters also provided recommendations about the specific types of water infrastructure projects that should be eligible under the final rule. In many of these cases, commenters recommended that Treasury include project types that are already eligible under the DWSRF and CWSRF and thus eligible under the interim final rule and final rule. For example, several commenters requested that aquifer recharge projects, or other groundwater protection and restoration projects, be included as eligible uses of SLFRF when certain aquifer recharge projects that (1) implement a nonpoint source pollution management program[308] or (2) constitute reuse of

[306] In addition, Treasury interprets the eligible uses of SLFRF funds against the background of the Coronavirus Relief Fund (CRF), for which the SLFRF funds are, in part, a successor. CRF recipients expressed great interest in using the CRF to pursue water infrastructure projects, including provision of drinking water and internal plumbing on Tribal lands and in Alaskan villages, and broadband projects throughout the country; Treasury permitted these projects given the connection to the public health emergency (see Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR 4182, 4190, 4192 (Jan. 15, 2021), but the short deadline for use of funds made it difficult to use CRF funds in this way. Congress' inclusion of the water, sewer, and broadband clause in the ARPA, along with the SLFRF funds' longer eligible use date, is responsive to this unmet need. As discussed below, Congress in the Infrastructure Investment and Jobs Act amended sections 602(c) and 603(c) of the Social Security Act to add a new paragraph as sections 602(c)(4) and 603(c)(5), respectively, providing that SLFRF funds may be used to meet non-federal matching requirements of any authorized Bureau of Reclamation project. This authority was added as a separately enumerated eligible use regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category.

[307] *See, e.g.,* section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), defining ''green infrastructure'' as ''the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.''

[308] Specifically, this would include desalination projects that decrease the burden on aquifers where there is causal relationship between aquifer withdrawals and saltwater intrusion if the projects implement a nonpoint source pollution

Continued

wastewater, stormwater, or subsurface drainage water are in fact eligible uses under the CWSRF. Furthermore, under the DWSRF, eligible projects include certain aquifer storage and recovery systems for water storage.

Treasury Response: Eligible projects articulated in the DWSRF and CWSRF continue to be eligible uses of SLFRF funds under the final rule. Recognizing that recipients have faced challenges interpreting eligible use categories under the interim final rule or cross-referencing EPA program materials to interpret eligible project types, Treasury is including in this Supplementary Information additional information on the types of projects eligible under the DWSRF and CWSRF. Treasury emphasizes that this further clarification does not represent a change in eligibility. Treasury encourages recipients to reference EPA handbooks for the DWSRF and CWSRF, which provide further information and detail about the types of projects eligible under those programs and thus under the final rule.

Eligible projects under the DWSRF. Eligibilities under the DWSRF, the interim final rule, and the final rule include projects that address present or prevent future violations of health-based drinking water standards. These include projects needed to maintain compliance with existing national primary drinking water regulations for contaminants with acute and chronic health effects. Projects to replace aging infrastructure are also eligible uses if they are needed to maintain compliance or further the public health protection objectives of section 1452 of the SDWA.[309] The following project categories are eligible under the DWSRF, were eligible under the interim final rule, and continue to be eligible under the final rule:

(i) *Treatment projects,* including installation or upgrade of facilities to improve the quality of drinking water to comply with primary or secondary standards and point of entry or central treatment under section 1401(4)(B)(i)(III) of the SDWA.

(ii) *Transmission and distribution projects,* including installation or replacement of transmission and distribution pipes to improve water pressure to safe levels or to prevent contamination caused by leaks or breaks in the pipes.

(iii) *Source projects,* including rehabilitation of wells or development of eligible sources to replace contaminated sources.

(iv) *Storage projects,* including installation or upgrade of eligible storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering a public water system.

(v) *Consolidation projects,* including projects needed to consolidate water supplies where, for example, a supply has become contaminated or a system is unable to maintain compliance for technical, financial, or managerial reasons.

(vi) *Creation of new systems,* including those that, upon completion, will create a community water system to address existing public health problems with serious risks caused by unsafe drinking water provided by individual wells or surface water sources. Eligible projects are also those that create a new regional community water system by consolidating existing systems that have technical, financial, or managerial difficulties. Projects to address existing public health problems associated with individual wells or surface water sources must be limited in scope to the specific geographic area affected by contamination. Projects that create new regional community water systems by consolidating existing systems must be limited in scope to the service area of the systems being consolidated.

Ineligible projects under the DWSRF. Federally-owned public water systems and for-profit noncommunity water systems are not eligible to receive DWSRF funds and therefore SLFRF funds.[310] The acquisition of water rights, laboratory fees for routine compliance monitoring, and operation and maintenance expenses are not costs associated with investments in infrastructure and thus would not be eligible under the final rule. [311] Projects needed primarily to serve future population growth are also ineligible under the DWSRF; the treatment of such projects under the final rule is discussed separately below under ''Expansion of Drinking Water Service.'' Projects eligible under the DWSRF must be sized only to accommodate a reasonable amount of population growth expected to occur over the useful life of the project.

Eligible projects under the CWSRF. The final rule continues to allow the use of SLFRF funds for projects eligible under the CWSRF, consistent with the interim final rule. Under the CWSRF, a project must meet the criteria of one of the following CWSRF eligibilities to be eligible for assistance. Section 603(c) of the Clean Water Act (CWA) [312] provides that the CWSRF can provide assistance:

(i) to any municipality, intermunicipal, interstate, or state agency for construction of publicly owned treatment works (as defined in section 212 of the CWA); [313]

(ii) for the implementation of a management program established under section 319 of the CWA; [314]

(iii) for the development and implementation of a conservation and management plan under section 320 of the CWA; [315]

(iv) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage. Eligible projects include, but are not limited to, the construction of new decentralized systems (*e.g.,* individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.

(v) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water. Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. For example, projects that are specifically required by a Municipal Separate Storm Sewer System (MS4) permit are eligible, regardless of ownership. Projects may include, but are not limited to green roofs, bioretention basins, roadside plantings, porous pavement, and rainwater harvesting.

(vi) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse. Eligible projects include, but are not limited to, the installation, replacement, or upgrade of water meters; plumbing fixture retrofits or replacement; and gray water recycling. Water audits and water conservation plans are also eligible.

management program under section 319 of the Clean Water Act. This could include projects in which desalinated seawater is injected into the aquifer to mitigate or prevent salt water intrusion, as well as projects in which brackish water is removed from an aquifer, desalinated, and returned to the aquifer.

[309] *See* 42 U.S.C. 300j–12(a)(2)(B) (limiting financial assistance used by a public water system to expenditures (including expenditures for planning, design, siting, and associated preconstruction activities, or for replacing or rehabilitating aging treatment, storage, or distribution facilities of public water systems, but not including monitoring, operation, and maintenance expenditures of a type or category which the Administrator of the EPA has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under 42 U.S.C. 300g–1 or otherwise significantly further the health protection objectives of the SWDA); *See also* 40 CFR 35.3520(b).

[310] *See* 40 CFR 35.3520(d)(1).

[311] *See id at* § 35.3520(e)(2)–(4).

[312] 33 U.S.C. 1383(c).

[313] 33 U.S.C. 1292.

[314] 33 U.S.C. 1329.

[315] 33 U.S.C. 1330.

Equipment to reuse effluent (*e.g.,* gray water, condensate, and wastewater effluent reuse systems) is eligible.

(vii) for the development and implementation of watershed projects meeting the criteria set forth in section 122 of the CWA.[316] Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 of the CWA are eligible: Watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works.

(viii) to any municipality, intermunicipal, interstate, or state agency for measures to reduce the energy consumption needs for publicly owned treatment works. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC, process equipment, and electronic equipment and systems at publicly owned treatment works. Planning activities, such as energy audits and optimization studies are also eligible.

(ix) for reusing or recycling wastewater, stormwater, or subsurface drainage water. Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (*e.g.,* gray water, condensate, and wastewater effluent reuse systems).

(x) for measures to increase the security of publicly owned treatment works. Security measures for publicly owned treatment works might include, but are not limited to, vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, laboratory equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance activities. Therefore, maintaining a human presence (*i.e.,* security guards) and monitoring activities are not eligible.

[316] 33 U.S.C. 1274.

Other Clarifications of DSWRF and CWSRF Eligible Project Categories

Public Comment: Several commenters requested that Treasury provide clarification of the requirements associated with use of SLFRF funds for necessary investments in water and sewer infrastructure.

Treasury Response: After release of the interim final rule, Treasury clarified in further guidance that, while recipients must ensure that water and sewer infrastructure projects pursued are eligible under the final rule, recipients are not required to obtain project pre-approval from Treasury or any other federal agency when using SLFRF funds for necessary water and sewer infrastructure projects unless otherwise required by federal law. For projects that are being pursued under the eligibility categories provided through the DWSRF or CWSRF programs, project eligibilities are based on federal project categories and definitions for the programs and not on each state's eligibility or definitions. While reference in the final rule to the DWSRF, CWSRF, or other federal water programs is provided to assist recipients in understanding the types of water and sewer infrastructure projects eligible to be funded with SLFRF, recipients do not need to apply for funding from the applicable state programs or through any federal water program. Similarly, besides eligible project categories, the final rule does not incorporate other program requirements or guidance that attach to the DWSRF, CWSRF, or other federal water programs. However, as noted above, recipients should be aware of other federal or state laws or regulations that may apply to construction projects or water and sewer projects, independent of SLFRF funding conditions, and that may require pre-approval from another federal or state agency.

Expanded Eligible Uses for Water and Sewer Infrastructure

Summary

Public Comment: Many commenters requested broader flexibility in the use of SLFRF funds for water and sewer infrastructure projects that are not eligible under the DWSRF and CWSRF. These commenters argued that localities are best situated to identify the highest-need water and sewer projects in their communities. Several Tribal government commenters noted that Tribes have different water and sewer infrastructure needs than states and localities and that additional flexibility in the use of funds would lift current barriers to improving infrastructure on Tribal lands.

To achieve additional flexibility, commenters suggested a range of options for broadening the eligible use of SLFRF funds for necessary water and sewer infrastructure. For example, several commenters suggested Treasury broaden the eligibilities provided under the interim final rule to include project types eligible under other federal water and sewer programs.

Treasury Response: Treasury agrees that additional flexibility for use of SLFRF funds is warranted and is providing expanded eligibilities as described below, several of which address specific areas of need outlined by Tribal and rural communities.

As discussed below, Treasury has incorporated into the final rule projects that are eligible under certain programs established by the EPA under the Water Infrastructure Improvements for the Nation Act (WIIN Act). Other water-related grant programs cited by commenters include projects that are otherwise already covered by the final rule, for example because they are covered as eligible under the DWSRF or the CWSRF, or projects that are ineligible under the final rule because they are beyond the scope of the meaning of water and sewer projects for purposes of ARPA. To minimize the need for recipients of SLFRF funds to cross reference eligibilities across multiple federal programs, which may exacerbate current challenges to understanding eligibility under SLFRF, Treasury is providing detailed information related to expanded eligibilities within the text of this **SUPPLEMENTARY INFORMATION** for the final rule.

Stormwater Infrastructure

Public Comment: Several commenters requested that additional stormwater infrastructure projects be included as eligible uses of SLFRF funds under the final rule. Commenters suggested that culvert repair and resizing and replacement of storm sewers is necessary to address increased rainfall brought about by a changing climate. Other commenters noted that rural communities that do not manage their own sewer systems may rely on this type of water infrastructure.

Treasury Response: The CWSRF includes a broad range of stormwater infrastructure projects, and as such these projects were eligible under the interim final rule and continue to be eligible under the final rule. These projects include gray infrastructure projects, such as traditional pipe, storage, and treatment systems. Projects

that manage, reduce, treat, or recapture stormwater or subsurface drainage water are also eligible, including real-time control systems for combined sewer overflow management, and sediment control. Culvert infrastructure projects are eligible under the CWSRF if they (1) implement a nonpoint source management plan, (2) implement National Estuary Program Comprehensive Conservation and Management Plan, or (3) implement a stormwater management plan with the goal of providing a water quality benefit. Stormwater projects under the CWSRF also encompass a number of eligible green infrastructure categories, such as green roofs, green streets, and green walls, rainwater harvesting collection, storage, management, and distribution systems, real-time control systems for harvested rainwater, infiltration basins, constructed wetlands, including surface flow and subsurface flow (*e.g.,* gravel) wetlands, bioretention/bioswales (*e.g.,* bioretention basins, tree boxes), permeable pavement, wetland, riparian, or shoreline creation, protection, and restoration, establishment or restoration of urban tree canopy, and replacement of gray infrastructure with green infrastructure including purchase and demolition costs.

In addition to the eligible uses under the CWSRF, Treasury is expanding the eligible uses under the final rule to include stormwater system infrastructure projects regardless of whether there is an expected water quality benefit from the project. Treasury anticipates that this eligible use will allow recipients to manage increased volumes of stormwater as a result of changes to the climate. For example, the final rule now permits the use of SLFRF funds for the repair, replacement, or removal of culverts or other road-stream crossing infrastructure to the extent the purpose of the project is to manage stormwater. In addition, Treasury understands that the repair, replacement, or removal of culverts may necessitate the repair or upgrade of roads. As noted in guidance issued after the interim final rule, recipients may use SLFRF funds for road repairs and upgrades that interact directly with an eligible stormwater infrastructure project. All stormwater infrastructure projects undertaken should incorporate updated design features and current best practices.

Private Wells and Septic Systems

Public Comment: Several commenters requested that the scope of eligible projects be expanded to allow for the expenditure of SLFRF funds on private wells or septic systems. Commenters noted that wells may be contaminated with dangerous substances, including arsenic, lead, radon, and PFAS (per- and polyfluoroalkyl). Commenters also suggested that, because rural and underserved communities are often reliant on these infrastructure types for their drinking water or wastewater needs, lack of appropriate funding to maintain these systems could present health and safety issues that disproportionately affect certain communities.

Treasury Response: Consistent with the CWSRF, the installation, repair, or replacement of private septic units continues to be an eligible use of SLFRF funds under the final rule. For example, eligible projects include those that address groundwater contamination resulting from faulty septic units and those that would connect failing septic systems to centralized wastewater treatment. Consistent with the DWSRF, connecting homes served by a private well to a public water system is an eligible use of SLFRF funds.

In addition, Treasury has provided in the final rule that recipients may use SLFRF funds for an expanded set of infrastructure projects that improve access to and provision of safe drinking water for individuals served by residential wells. Eligible projects under this category include rehabilitation of private wells, testing initiatives to identify contaminants in wells, and treatment activities and remediation strategies that address contamination.

Remediating Lead in Water

Public Comment: Several commenters emphasized the need to fully remediate lead contamination, especially in structures that serve the public or populations like children that are particularly vulnerable to the effects of lead exposure, such as schools and daycares. Many American households and an estimated 400,000 schools and childcare centers currently lack safe drinking water.[317]

Treasury Response: The replacement of lead service lines, up to premise plumbing, is an eligible use under the DWSRF and continues to be an eligible use of SLFRF funds. Such projects are eligible regardless of the pipe material of the replacement lines and ownership of the property on which the service line is located. Lead service line replacement projects can serve households, schools, or any other entities. Given the lifelong impacts of lead exposure for children and the widespread prevalence of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

In addition, Treasury is providing in the final rule that for lead service line replacement projects, recipients must replace the full length of the service line, and not just a partial portion of the service line. Some water utilities, when replacing service lines, will only replace the ''public portion'' of the service line and physically slice through the lead service line at the public/private line. This action can result in elevated drinking water lead levels for some period of time after replacement, suggesting the potential for harm, rather than benefit during that time period.[318] Requiring replacement of the full length of the service line is also consistent with the requirements of the EPA's Lead and Copper Rule Revisions for water systems that have an action level exceedance for lead[319] and certain other water systems.[320]

Treasury is expanding eligible uses of SLFRF funds to include infrastructure projects eligible under EPA grant programs authorized by the WIIN Act.[321] Eligible projects under these programs include the installation or re-optimization of corrosion control treatment, replacing lead service lines, replacing galvanized pipes downstream of a lead service line (other than lead pipes within a home as discussed below), and maintaining an inventory of the drinking water system's service lines. Water quality testing, compliance monitoring, and remediation activities in schools and other childcare facilities, as well as activities necessary to respond to a contaminant, are eligible uses of SLFRF funds.[322] Remediation

[317] The White House, Updated Fact Sheet: Bipartisan Infrastructure Investment and Jobs Act (August 2, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/02/updated-fact-sheet-bipartisan-infrastructure-investment-and-jobs-act/.*

[318] *See* EPA Science Advisory Board, Evaluation of the Effectiveness of Partial Lead Service Line Replacements, (September 2011), *https://www.epa.gov/sdwa/science-advisory-board-evaluation-effectiveness-partial-lead-service-line-replacements* (advising against partial lead service line replacement).

[319] Environmental Protection Agency, *supra* note 188.

[320] Environmental Protection Agency, National Primary Drinking Water Regulations: Lead and Copper Rule Revisions, 86 FR 4198. 40 CFR 141.84, and preamble *at* 4215, January 15, 2021, *https://www.federalregister.gov/d/2020-28691;* scheduled to become effective December 16, 2021, Environmental Protection Agency, 86 FR 31939, *https://www.federalregister.gov/d/2021-12600.*

[321] Eligible uses of funds include those eligible under the Small, Underserved, and Disadvantaged Communities Grant (Section 2104), Reduction in Lead Exposure via Drinking Water Grant Program (Section 2105) and Lead Testing in School and Child Care Program Drinking Water Grant Program (Section 2107).

[322] Such testing and remediation programs would be an eligible use of SLFRF funds given that they

activities such as replacement of faucets, internal plumbing, and fixtures in schools and childcare facilities are also an eligible use of SLFRF funds.

Consistent with the EPA programs, replacement of lead pipes within a home is not eligible under the final rule because the vast majority of lead contamination cases can be solved by replacing lead service lines (including on public and private property) and faucets and fixtures themselves. As such, replacement of lead pipes within a home would not be considered a cost-effective means for achieving the desired level of service and thus would not be a ''necessary'' investment. The provision of bottled water is also not an eligible use of SLFRF funds under this eligible use category, as it is not an investment in infrastructure. However, bottled water in areas with an action level exceedance for lead in water may be an eligible use of SLFRF funds under a separate eligible use category for ''remediation of lead paint and other lead hazards;'' see Assistance to Households in Public Health and Negative Economic Impacts.

Water filtration systems are eligible under the EPA grant programs and the final rule as long as they are installed as a permanent part of a facility's system and not intended for temporary use. Conducting remediation, follow-up monitoring, and conducting public education and outreach about the availability of infrastructure programs, such as water testing and fixture replacement programs funded with SLFRF funds or otherwise, are also eligible projects. Finally, recipients should note that ''remediation of lead paint and other lead hazards'' is a separate eligible use category and a broader range of programs and services may be eligible under that section, including investments that are not infrastructure; see the eligible use for ''remediation of lead paint and other lead hazards'' in section Assistance to Households in Public Health and Negative Economic Impacts.

Dams and Reservoirs

Public Comment: Many commenters requested that Treasury broaden eligibilities to include dams and reservoirs, infrastructure that commenters noted may in its current state be unsafe and could put surrounding communities at risk. Some commenters argued that dams and reservoirs play an important role in providing municipal water supply and water to irrigate farmland, including in areas impacted by recent droughts. Other commenters noted that a large number of dams are currently classified as high-hazard structures, the failure of which would have severe consequences for public safety and the local environment. With respect to reservoirs, commenters articulated that changing climate conditions have necessitated upgrades to reservoir infrastructure to ensure existing facilities can meet the local water needs of a community. Commenters noted that communities facing drought may also need to adjust or enhance reservoirs to maintain adequate water supply.

In contrast, several commenters suggested that infrastructure projects related to dams and reservoirs should not be considered eligible uses of SLFRF funds. These commenters noted that alternate sources of funding exist for dam and reservoir projects and that dams and reservoir infrastructure could result in negative impacts to Tribal communities and negative environmental impacts, including harm to wildlife habitats.

Treasury Response: Treasury understands that many dams and reservoirs in need of rehabilitation are dams and reservoirs whose primary purpose is to provide drinking water. As discussed above, SLFRF funds are available for projects related to the provision of drinking water. Moreover, since issuance of the interim final rule, the EPA has adopted a class deviation from the DWSRF regulations that permits such dam and reservoir rehabilitation projects in certain circumstances.[323] In approving this class deviation, the EPA recognized that many dams used for drinking water are aging and deteriorating and pose a public health risk to communities; that current dam conditions do not meet state safety standards; and that reservoir capacity has diminished and requires dredging to meet drinking water needs of the existing population.

Treasury's final rule provides that funds may be used for rehabilitation of dams and reservoirs if the primary purpose of the dam or reservoir is for drinking water supply and the rehabilitation project is necessary for continued provision of drinking water supply. In considering whether a dam or reservoir project is necessary for the provision of drinking water supply, a recipient may take into consideration future population growth in certain circumstances, as discussed under ''Expansion of Drinking Water Service Infrastructure'' below, but the project must in any case be designed to support no more than a reasonable level of projected increased need. The recipient must also determine that the project is cost-effective, *i.e.,* that there are not significantly superior alternatives that are available, taking into consideration the relative costs and benefits of the project as compared to those alternatives.

This change to the final rule would permit a wide variety of projects.[324] The limitation in the final rule to rehabilitation of existing dams and reservoirs reflects the scope of the EPA class deviation referenced above and Treasury's understanding of the significant need for investments in rehabilitation to address deterioration of dams and the diminished capacity of reservoirs. Further, Treasury expects that in many cases it would be considerably more difficult to demonstrate that construction of a new dam or reservoir would be necessary for the purpose of the provision of drinking water than is the case for rehabilitation of dams and reservoirs already serving that purpose for a particular population, particularly given opportunities to meet drinking water needs through water reuse and conversation efforts. For these reasons, and given that the relatively short period of availability of the funds makes new dam and reservoir construction with these funds less likely, Treasury has limited the scope of the final rule to dam and reservoir rehabilitation projects.

As discussed above, Treasury has determined that ARPA does not authorize the use of SLFRF funds for uses other than the provision of drinking water and the management of wastewater and storm water. As such, the final rule does not include infrastructure projects related to dams and reservoirs as eligible uses of SLFRF funds unless they meet the conditions discussed above.

would help a recipient determine whether an infrastructure project, such as a lead line replacement, is necessary. In contrast, as mentioned above, the costs of continual testing that is part of a drinking water or wastewater facilities' operating costs would not be considered part of an infrastructure project.

[323] *See* EPA, Approval of Class Exception from the Regulatory Prohibitions on the Use of Drinking Water State Revolving Fund for Rehabilitation of Dams and Reservoirs (July 14, 2021), available at *https://www.epa.gov/system/files/documents/2021-07/dwsrf-class-deviation-dam-reservoir-rehab-2021_0.pdf.*

[324] As noted in the EPA's class deviation, examples of dam rehabilitation projects include spillway reconstruction or repair; dam resurfacing, patching, or other structural repairs, including minimal height increases if needed to maintain the structural integrity of the dam; grouting for seepage control or liquefaction remediation (*e.g.,* epoxy resin, asphalt, or rock); repair or replacement of drainage systems; and seismic stability efforts (*e.g.,* anchors). Examples of reservoir rehabilitation projects include sedimentation dredging and reservoir lining.

Public Comment: Several commenters requested that the removal of dams and associated habitat restoration should be eligible uses of SLFRF funds, noting that in some cases, dam removal will improve water quality while removing long-term operational expenses for the recipient.

Treasury Response: Dam removal projects and associated stream and habitat restoration projects are eligible uses of the CWSRF and continue to be eligible under the final rule when the removal implements either a nonpoint source management program plan or a National Estuary Program Comprehensive Conservation and Management Plan or when the removal will provide a water quality benefit. Habitat restoration projects more generally may also be eligible under the CWSRF and the final rule if they constitute a form of stormwater infrastructure.

Expansion of Drinking Water Service Infrastructure

Public Comment: Commenters asked for the ability to use funds for drinking water projects for the purpose of meeting needs arising from future growth, which, given the restrictions applicable to the DWSRF, was not permitted under the interim final rule.

Treasury Response: As provided for in the SDWA, the DWSRF is meant to serve the public health needs of the existing population. The EPA regulation implementing the DWSRF program provides that projects needed primarily to serve future population growth are not eligible uses of the DWSRF. A project that is intended primarily to address public health or regulatory compliance issues for the existing service population may be sized for a ''reasonable'' amount of population growth over the useful life of the project.[325]

ARPA does not include the same limitation as the SDWA. Accordingly, the final rule provides that recipients may use SLFRF funds for projects that are needed to support increased population in certain cases. ARPA limits projects to those investments that are ''necessary.'' As discussed above, Treasury interprets this to mean that the investments must be (1) responsive to an identified need to achieve or maintain an adequate minimum level of service, which for some eligible project categories may include a reasonable projection of increased need, whether due to population growth or otherwise and (2) a cost-effective means for meeting that need, taking into account available alternatives. For this eligible use category, expansion of drinking water service infrastructure, the project must also be projected to be sustainable over its estimated useful life.

Investments must be determined to be necessary when they are initiated. Accordingly, Treasury is clarifying in the final rule that the need identified for a water or sewer project may include a need arising from reasonable expectations of future population growth, provided that it is necessary at the time the investment is initiated for the recipient to make the investment to meet this growth. For example, a recipient expecting increased population during the period of performance may install a drinking water treatment plant to meet that growth. In addition, a recipient expecting increased population growth outside the period of performance may install the treatment plant if the planning and construction timeline for the project would require work to begin during the performance period in order to meet the expected population growth. A recipient may install transmission lines as part of the development of new housing occurring during the period of performance. In this case, the housing development must be in progress; a recipient may not use the SLFRF funds to install a water main, for example, to an undeveloped tract in the expectation that in the future that tract will be developed with housing, because there would be no need for that investment to be made at the time it is initiated.

For the reasons discussed above, if a project is undertaken to address expected growth in population, the project must also be sustainable, meaning that the project can continue providing the adequate minimum level of service for its estimated useful life, taking into account projected impacts of changes to the climate and other expected demands on the source of water. In considering how much of a source of water will be available in the future for the drinking water project, a recipient must consider that a source of water may be drawn upon or otherwise used for other current and expected uses, including use by fish and other wildlife. A drinking water project that is designed to address a growing population cannot be considered a necessary investment if the source of drinking water will cease to be available to meet the population's needs before the end of the estimated useful life of the project. In such a case, a recipient should consider alternative sources for drinking water. See ''Interpretation of Necessary Investments and Water and Sewer Infrastructure'' above for more information.

Non-Federal Matching Requirements for Authorized Bureau of Reclamation Projects

The Infrastructure Investment and Jobs Act amends sections 602(c) and 603(c) of the Social Security Act to add an additional eligible use of SLFRF funds, providing that SLFRF funds ''may be used for purposes of satisfying any non-Federal matching requirement required for [an authorized Bureau of Reclamation project].'' [326]

This amendment permits the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. These amendments are effective as of March 11, 2021, as if included in the ARPA at the time of its enactment.[327] Treasury will provide further guidance to recipients on the scope of Bureau of Reclamation water projects and expenses covered by this provision.

Floodplain Management and Flood Mitigation Projects

Public Comment: Several commenters requested that projects to address floodwater, including floodplain management and flood mitigation projects, be included as an eligible use of SLFRF funds. Within this category of floodplain management and flood mitigation infrastructure, several commenters requested that the installation of levees, flood walls, sea walls, elevation projects, dredging, or nature-based flood mitigation projects be included as eligible projects.

Treasury Response: Treasury notes that some floodplain management and flood mitigation infrastructure projects, including green infrastructure designed to protect treatment works from flood waters and flood impact are currently eligible under the CWSRF and therefore continue to be eligible under the final rule.

Treasury has not included floodplain management and flood mitigation projects more generally as eligible under the final rule. Although floodplain management and flood mitigation are functions of many state and local governments, they are not the sort of generally-provided essential services included within the meaning of water

[325] *See* 40 CFR 35.3520(e)(5).

[326] *See* Public Law 117–58, 40909(a)–(b) (Nov. 15, 2021).

[327] *See* Public Law 117–58 § 40909(c).

and sewer projects under the ARPA, as discussed above.

Irrigation

Public Comment: Some commenters requested that irrigation projects be an eligible use because they consider such projects to be critical infrastructure. Several commenters supported this request by noting that irrigation systems may be used to replenish aquifers and recharge wells, in addition to delivering water for irrigation. One commenter also noted that the national irrigation system is antiquated and in need of repair.

Treasury Response: Some irrigation projects were eligible under the interim final rule and continue to be eligible under the final rule as a result of their inclusion as eligible projects under the CWSRF. For example, water efficient irrigation equipment that reduces the runoff of nutrients and implements a management program established under section 319 of the CWA and/or a conservation and management plan under section 320 of the CWA are eligible uses under the CWSRF and therefore continue to be an eligible use of SLFRF funds under the final rule. Likewise, projects to receive and distribute reclaimed water for irrigation systems or other agricultural use are eligible under the CWSRF and therefore continue to be an eligible use under the final rule. Unlike projects for the improvement of irrigation systems generally, these reclaimed water projects are related to wastewater treatment and stormwater management, which are within the scope of the meaning of water and sewer infrastructure for purposes of ARPA.

Treasury considered commenter requests for inclusion of additional irrigation infrastructure and determined that irrigation projects more generally are not permitted under the final rule. Although these types of projects may be water-related infrastructure, they are not the sort of generally-provided essential services included within the meaning of water and sewer projects under ARPA, as discussed above.

Consumer Incentive Programs

Public Comment: One commenter requested that consumer incentive programs in the areas of water use efficiency, conservation, green infrastructure, reuse, and other distributed solutions be an allowable use of SLFRF.

Treasury Response: The DWSRF and CWSRF eligibilities include the development and implementation of incentive and educational programs that address and promote water conservation, source water protection, and efficiency related to infrastructure improvements, *e.g.,* incentives such as rebates to install green infrastructure such as rain barrels or promote other water conservation activities. Treasury clarifies that such project types were eligible under the interim final rule and continue to be eligible under the final rule.

2. Broadband Infrastructure

Under the ARPA, recipient governments may use SLFRF funds to make ''necessary investments in . . . broadband infrastructure.'' In the Supplementary Information to the interim final rule, Treasury interpreted necessary investments in infrastructure as investments ''designed to provide an adequate minimum level of service and [that] are unlikely to be made using private sources of funds.'' Treasury explained that, with respect to broadband specifically, such necessary investments include projects that ''establish [ ] or improve [ ] broadband service to underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.''

Summary of Interim Final Rule, Public Comments, and Treasury Response

Summary of Interim Final Rule: In implementing the ARPA, the interim final rule provided that eligible broadband infrastructure investments are limited to those that are designed to provide service to unserved or underserved households or businesses, defined as those that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. The interim final rule also provided that eligible projects under the SLFRF are limited to those that are designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. In instances where it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project, the interim final rule provided that the project would be required to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.

In addition, Treasury, in the Supplementary Information to the interim final rule, encouraged recipients to pursue a number of other objectives. First, Treasury encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last-mile connections. Second, Treasury encouraged recipients to integrate affordability options into their program design. Third, Treasury encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives. Fourth, Treasury encouraged recipients to avoid investing in locations with existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources. Finally, following release of the interim final rule, Treasury provided further guidance clarifying some aspects of broadband infrastructure eligibility, specifically on flexibility for recipients to determine eligible areas to be served,[328] middle-mile projects,[329] pre-project development costs,[330] broadband connections to schools or libraries,[331] and the applicability of the National Environmental Policy Act (NEPA) and the Davis-Bacon Act.[332]

Summary of Public Comments: Treasury received several comments on the interim final rule's requirements regarding eligible areas for investment and build-to speed standards, as well as Treasury's encouragements in the Supplementary Information of the interim final rule. Many commenters found the interim final rule's requirement to limit projects to those designed to provide service to unserved or underserved households or businesses to be appropriately focused on hard-to-reach areas. In contrast, other commenters argued that this requirement was too restrictive and that it would limit the ability for some recipients, particularly local governments, to invest in broadband infrastructure.

Separately, some commenters supported the interim final rule's requirement that eligible projects be built to reliable speeds of 100 Mbps symmetrical, with an exception for areas where it was impracticable, and encouragement that projects be built with fiber-optic infrastructure, while a

[328] *See FAQ 6.8, 6.9, 6.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[329] *See FAQ 6.10. Id.*

[330] *See FAQ 6.12. Id.*

[331] *See FAQ 6.16. Id.*

[332] *See FAQ 6.4, 6.17. Id.*

few others argued that the interim final rule should remain technology-neutral and that lower speed standards would be more appropriate for today's usage needs.

Summary of Treasury Response: In response to the comments, the final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment, which would include but not be limited to a lack of broadband service reliably delivering certain speeds. In addition, as discussed further below, the final rule further supports the expansion of affordable access to broadband service for households by requiring that recipients use a provider that participates in a qualifying affordability plan. Treasury encourages recipients to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. As was the case under the interim final rule, in cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to focus on projects that will achieve last-mile connections, whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

The final rule requires recipients to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, given that such a project cannot be considered a necessary investment in broadband infrastructure if it is not affordable to the population the project would serve. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to either participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP), or otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low-income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps and at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Recipients will be required to report speed, pricing, and any data allowance information as part of mandatory reporting to Treasury.

The final rule also clarifies that subsidies to households and communities impacted by the pandemic to access the internet, broadband adoption programs, digital literacy programs, and device programs are eligible programs to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A) and 603(c)(1)(A). See section Assistance to Households in Negative Economic Impacts.

Treasury continues to encourage recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives. In addition, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams. Further, Treasury highlights that recipients are subject to the prohibition on use of grant funds to procure or obtain certain telecommunications and video surveillance services or equipment as outlined in 2 CFR 200.216 and 2 CFR 200.471 and clarifies that modernization of cybersecurity for existing and new broadband networks are eligible uses of funds under sections 602(c)(1)(D) and 603(c)(1)(D).

Finally, this Supplementary Information to the final rule incorporates and confirms guidance issued by Treasury following the interim final rule regarding middle-mile projects,[333] pre-project development costs,[334] broadband connections to schools or libraries,[335] and applicability of the National Environmental Policy Act (NEPA) and Davis-Bacon Act.[336]

The remainder of this section provides additional details on the final rule. Specifically, these sections address: (1) Eligible areas for investment; (2) build-to speed standards; (3) affordability; (4) public networks; (5) duplication of efforts and resources; (6) cybersecurity; and (7) use of funds to meet non-federal match under the Infrastructure Investment and Jobs Act.

Eligible Areas for Investment

The interim final rule limited eligible broadband investments to projects focused on delivering service to unserved or underserved locations, defined as households or businesses that lack access to a wireline connection capable of reliably delivering at least minimum speeds of 25 Mbps download and 3 Mbps upload. This targeted approach was generally consistent with certain speed thresholds used in other federal programs to identify eligible areas for federal investment in broadband infrastructure, such as the FCC's Rural Digital Opportunity Fund (RDOF) program and the National Telecommunication and Information Administration's (NTIA's) Broadband Infrastructure Program, and generally aligns with the FCC's benchmark for an ''advanced telecommunications capability'' for wireline broadband services.

Public Comment: Many commenters discussed the disadvantages of such an approach. Some commenters, including several local government recipients, argued that limiting investments to locations without access to reliable wireline 25/3 Mbps[337] was too

[333] *See FAQ 6.10.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[334] *See FAQ 6.12. Id.*

[335] *See FAQ 6.16. Id.*

[336] *See FAQ 6.4, 6.17. Id.*

[337] In the remainder of this Supplementary Information, ''25/3 Mbps'' refers to broadband infrastructure that is designed to reliably meet or exceed at least 25 Mbps download speeds and 3

restrictive because some urban jurisdictions are already mostly or entirely covered by a network with at least 25/3 Mbps speeds yet lack widespread broadband adoption for various reasons. Commenters suggested that recipients would benefit from greater flexibility to provide necessary investments in broadband access in areas that are nominally covered by speeds of at least 25/3 Mbps, such as to provide affordable broadband access in low-income areas or to address service quality and reliability issues. Further, commenters argued that Treasury's requirement that new projects meet minimum reliable speeds of 100 Mbps symmetrical was inconsistent with the requirement that broadband infrastructure projects focus on those with access to significantly lower speeds, and further noted that several states have already expanded the focus of their broadband programs beyond those without reliable access to speeds of 25/3 Mbps. Commenters argued that if the limitation to unserved and underserved households and businesses were maintained, the definition of unserved and underserved households and businesses should be revised to include households and businesses currently served by higher standards. Commenters proposed a number of alternative cutoff speeds, including 25/25 Mbps, 50/10 Mbps, and 100 Mbps symmetrical. Others expressed support for providing flexibility for recipients to make their own determination on eligible areas for investment. These commenters referenced studies indicating that 25/3 Mbps is inadequate for today's modern household or business needs.

Some commenters advocated for unserved and underserved areas to be prioritized while providing flexibility for recipients to serve areas beyond those designated as unserved or underserved. Reflecting the perceived restrictiveness of the interim final rule approach, some commenters asked for assurance that projects conducted under other categories of SLFRF eligible uses, specifically to respond to the public health and negative economic impacts of the pandemic under sections 602(c)(1)(A)–(C) and 603(c)(1)(A)–(C), were not barred by the presence of 25/3 Mbps service, including ''gap networks,'' which are networks designed to offer low-cost or no-cost internet access for lower-income households with low broadband adoption rates.

Commenters suggested additional factors to be incorporated in the consideration of locations that are eligible to be served. Many commenters suggested that affordability should be considered a key factor when determining whether a community has access to broadband, as the presence of 25/3 Mbps service does not necessarily mean the service is financially accessible to the area's residents. Commenters noted that surveys indicate that affordability, not lack of coverage, is the most significant barrier for most Americans who do not have robust broadband service in their households. Some advocated that the final rule allow for investments in areas with existing reliable wireline access at or above 25/3 Mbps as long as existing broadband service has been unaffordable for a certain segment of the population; others advocated that Treasury presume eligibility when investments are made in certain areas, such as Qualified Census Tracts or neighborhoods with persistent poverty, or are made by Tribal governments. Separately, some commenters noted that Treasury should provide more clarification on what constitutes a ''reliabl[e]'' connection, including providing details as to latency, jitter, and other technical specifications that would meet that standard, and what it means for certain technologies, such as copper and other outdated technologies, to be deemed presumptively unreliable.

Other commenters supported the interim final rule's approach on eligible areas for investment or suggested tightening eligibility even further. They argued that higher speed thresholds beyond 25/3 Mbps would likely lead to investments in or building of new broadband infrastructure in areas already served by broadband at speeds these commenters considered sufficient; these areas, commenters suggested, are less in need of federal assistance and permitting investments here could divert funding away from rural areas to more densely populated areas.

Treasury Response: The final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment. Recipients have flexibility to identify a need for additional broadband infrastructure investment: Examples of need include lack of access to a connection that reliably meets or exceeds symmetrical 100 Mbps download and upload speeds, lack of affordable access to broadband service, or lack of reliable broadband service. Recipients are encouraged to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed, as many commenters indicated that those without such service constitute hard-to-reach areas in need of subsidized broadband deployment.

Households and businesses with an identified need for additional broadband infrastructure investment do not have to be the only ones in the service area served by an eligible broadband infrastructure project. Indeed, serving these households and businesses may require a holistic approach that provides service to a wider area, for example, in order to make ongoing service of certain households or businesses within the service area economical.

Consistent with further guidance issued by Treasury,[338] in determining areas for investment, recipients may choose to consider any available data, including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, interviews with community members and business owners, reports from community organizations, and any other information they deem relevant.

In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive internet service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency, jitter, or deterioration of the existing connections make their user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier),[339] and other factors related to

Mbps upload speeds. ''100 Mbps'' symmetrical refers to broadband infrastructure that is designed to reliably meet or exceed at least 100 Mbps download speeds and 100 Mbps upload speeds.

[338] *See FAQ 6.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[339] Legacy technologies such as copper telephone lines (typically using Digital Subscriber Line technology) and early versions of cable system technology (DOCSIS 2.0 or earlier) typically lag on speeds, latency, and other factors, as compared to more modern technologies like fiber-optic. *See, e.g., https://www.fcc.gov/sites/default/files/tech_transitions_network_upgrades_that_may_affect_your_service.pdf* (comparing copper to fiber and noting that copper wire networks have ''limited speeds,'' are ''susceptible to signal interference/loss,'' and have a ''relatively short life''); *https://*

Continued

the services to be provided by the project. In addition, recipients may consider the actual experience of current broadband customers when making their determinations; whether there is a provider serving the area that advertises or otherwise claims to offer broadband at a given speed is not dispositive.

Build-To Speed Standards

The interim final rule provided that a recipient may use funds to make investments in broadband infrastructure that is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds. In cases where it is not practicable, because of the excessive cost of the project or the geography or topography of the area to be served by the project, eligible projects may be designed to reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, so long as it is scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed. Relatedly, Treasury in the **SUPPLEMENTARY INFORMATION** to the interim final rule encouraged recipients to prioritize investments in fiber-optic infrastructure wherever feasible and to prioritize projects that achieve last-mile connections.

Public Comment: Many commenters discussed the advantages of setting minimum symmetrical download and upload speeds of reliable 100 Mbps as the speed threshold for new projects. Some commenters indicated support for the interim final rule's standard as it takes into account growing demands on internet use resulting from pandemic broadband usage and suggested that such a standard will help to ensure that networks built with SLFRF funds remain valuable for years to come, even as demands continue to accelerate, particularly on upload speeds. Some also indicated that the interim final rule standard has the effect of prioritizing the use of fiber-optic infrastructure to deliver such speeds, which some noted was a ''gold standard'' future-proof technology, although some commenters noted that other technologies like fixed wireless have been shown to deliver such speeds in certain circumstances.

Other commenters suggested that 100 Mbps symmetrical speeds were unnecessary given current broadband usage needs and that such high standards may have the potential to slow down expansion to unserved or underserved rural areas. Some argued that setting this symmetrical threshold may limit the type of technologies that can be used, thereby decreasing competition and limiting flexibility to recipients whose communities might be better served by technologies such as wireless solutions or inexpensive gap networks. Commenters suggested alternate minimum speeds, ranging from 25/3 Mbps (which some argued best balances reaching all communities and maximizing the impact of federal funds) to 100/20 Mbps (which some argued best serves the typical broadband usage patterns of households and businesses, including new pandemic-driven needs). A few commenters suggested a higher minimum speed, such as gigabit speeds, advocating that such speeds were necessary for a network to last at least a decade.

Many commenters supported the interim final rule's lower speed standards for projects where it is impracticable to meet minimum reliable speeds of 100 Mbps symmetrical, as it provides flexibility for recipients to invest in hard-to-reach areas, such as those in mountainous regions. A few commenters indicated that Treasury should more clearly define the characteristics of a location eligible for this exception. Some indicated that the minimum standard for all new projects should be 100 Mbps symmetrical. In contrast, others argued that scalability to 100 Mbps symmetrical should not be a requirement to meet today's demands, particularly in hard-to-reach areas.

Some commenters requested that Treasury clarify eligibility for middle-mile projects as these projects potentially provide connectivity to far-reaching areas, while other commenters suggested that last-mile projects generally require more capital investment and are therefore most in need of government support.

Treasury Response: The final rule maintains the interim final rule's requirement that eligible projects be designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds, with the interim final rule's exception for projects where it is impracticable to build to such speeds due to excessive cost, geography, or topography of the area to be served by the project. Given the build time associated with broadband infrastructure projects, these standards will enable SLFRF funds to fund lasting infrastructure that will be able to accommodate increased network demand once the network is complete,[340] while providing flexibility for certain locations to meet lower speed standards where 100 Mbps symmetrical speeds are impracticable.

To illustrate the accelerating need for higher upload speeds, by one measure, mean upload speeds as of October 2021 increased to 75.21 Mbps as compared to 62.11 Mbps a year earlier.[341] Jurisdictions are increasingly responding to the growing demands of their communities for high speeds; for example, Illinois requires 100 Mbps symmetrical service as the construction standard for their state broadband grant programs. The 100 Mbps symmetrical standard accounts for increased pandemic internet usage and provides adequate upload speeds for individuals and businesses to accommodate interactive applications such as virtual learning and videoconferencing, while also helping ensure that funding is responsibly used to provide a true and lasting benefit for years to come. Treasury continues to encourage recipients to prioritize investments in fiber-optic infrastructure wherever feasible, as such advanced technology enables the next generation of application solutions for all communities and is capable of delivering superior, reliable performance and is generally most efficiently scalable to meet future needs.[342] In designing these projects, recipients should ensure that the broadband infrastructure provides ''reliable'' service at required speeds and are not required to rely on providers' advertised speeds in their assessments.

Consistent with further guidance issued by Treasury,[343] while recipients are permitted to make investments in ''middle-mile'' connections that otherwise satisfy the requirements of the final rule, Treasury continues to encourage recipients to focus on

data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf (comparing fiber with DSL and cable technologies on a number of dimensions); *https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband* (providing a technical background comparing fiber technology to other legacy technologies).

[340] Using the Federal Communications Commission (FCC) Broadband Speed Guide, a household with two telecommuters and two to three remote learners today is estimated to need 100 Mbps download to work simultaneously. *See* Federal Communications Commission, Broadband Speed Guide, available at *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited October 28, 2021).

[341] United States' Mobile and Broadband Internet Speeds—Speedtest Global Index, available at *https://www.speedtest.net/global-index/united-states#fixed.*

[342] Bennett Cyphers, The Case for Fiber to the Home, Today: Why Fiber is a Superior Medium for 21st Century Broadband, Electronic Frontier Foundation (October 16, 2019), *https://www.eff.org/wp/case-fiber-home-today-why-fiber-superior-medium-21st-century-broadband.*

[343] *See FAQ 6.10,* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

projects that will achieve last-mile connections—whether by focusing directly on funding last-mile projects or by ensuring that funded middle-mile projects have commitments in place to support new and/or improved last-mile service.

Affordability

The interim final rule encouraged recipients to consider ways to integrate affordability options into their program design but did not require recipients to take particular actions. The interim final rule also provided that assisting households with internet access and digital literacy is an eligible use of SLFRF funds under sections 602(c)(1)(A) and 603(c)(1)(A) to respond to the negative economic impacts of COVID–19.

Public Comment: Many commenters suggested that Treasury provide recipients with a broader set of tools to tackle what the commenters characterized as an affordability crisis in the broadband sector. As noted above, some commenters proposed that Treasury consider affordability when determining whether an area is unserved or underserved by broadband. Some commenters indicated that the final rule should allow for the construction of broadband networks in low-income neighborhoods including low-cost or no-cost gap networks, even in areas with existing service at the speeds required under the interim final rule. Other commenters voiced support for direct subsidies to low-income communities to afford broadband service, which would provide additional incentives for providers to serve these communities.

Treasury Response: In response to many commenters that highlighted the importance of affordability in providing meaningful access to necessary broadband infrastructure, the final rule provides additional requirements to address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF. Recipients must require the service provider for a completed broadband infrastructure investment project that provides service to households to:

- Participate in the Federal Communications Commission's (FCC) Affordable Connectivity Program (ACP); or
- Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.

Recipients must require providers to participate in or provide access to these programs through the life of the ACP. This requirement will no longer apply once the SLFRF-funded broadband infrastructure is no longer in use.

Furthermore, Treasury also recognizes the importance of affordable broadband access for all consumers beyond those that are low income. As part of their project selection process, recipients are encouraged to consult with the community on the general affordability needs of the target markets in the proposed service area. Additionally, recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps at speeds that are sufficient for a household with multiple users to simultaneously telework and engage in remote learning. Treasury will require recipients to report speed, pricing, and any data allowance information as part of their mandatory reporting to Treasury.

Further, Treasury is clarifying that, as a response to the public health and negative economic impacts of the pandemic, recipients may provide households and communities impacted by the pandemic with subsidies to help pay for internet service, digital literacy programs, broadband adoption programs, and device programs that provide discounted or no-cost devices for low-income households to access the internet. For further discussion of this eligible use category, see the section internet Assistance in Assistance to Households in Public Health and Negative Economic Impacts.

Public Networks

The interim final rule encouraged recipients to prioritize support for local networks owned, operated, or affiliated with local governments, nonprofits, and cooperatives.

Public Comment: Many commenters voiced their support for Treasury's encouragement that recipients work with governmental or community entities to establish local networks, arguing that they have been shown to effectively provide broadband access to areas that would otherwise be left with unaffordable or insufficient service. These commenters suggested that, since these entities are less driven by financial returns to investment than private providers, in some circumstances they may be able to provide robust service at a lower price as compared to private providers, along with potentially increasing local competition in a service area.

Other commenters argued against Treasury's encouragement, remarking that private businesses have a robust track record of serving hard-to-reach customers. These commenters argued that commercial providers have greater technical and operational expertise in deploying and operating broadband networks and may be able to construct broadband networks with greater efficiency. Additionally, some commenters argued that providing what they considered an unfair competitive advantage for government- or community-owned or operated networks may hurt consumers over time.

Treasury Response: The final rule maintains the interim final rule's encouragement for recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, nonprofits, and cooperatives, given that these networks have less pressure to generate profits and a commitment to serve entire communities.[344] This encouragement provides flexibility for recipients to select providers that best fit their needs, while noting the critical role that networks owned, operated, or affiliated with local governments and community organizations can play in providing sufficient coverage, affordable access, or increased competition in the broadband sector.

Duplication of Efforts and Resources

Public Comment: Some commenters raised concerns that Treasury's encouragement in the interim final rule that recipients avoid funding projects in locations with an existing agreement to provide service that reliably delivers 100/20 Mbps by December 31, 2024 was too restrictive. Commenters noted that many plans do not always lead to a successful and complete deployment, as issues may arise that prevent such infrastructure from deploying on time or at all, and that several existing federal grants were designed and awarded before the onset of the COVID–19 pandemic and do not meet the critical broadband needs highlighted by the pandemic. Other commenters argued that Treasury's encouragement to avoid duplication of resources should be strengthened, as investing in areas with existing agreements would be an inefficient duplication of efforts.

Treasury Response: Given the final rule's revised requirements on eligible areas for investment, this

[344] The Executive Office of the President, Community-Based Broadband Solutions (January 2015), *https://obamawhitehouse.archives.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf.*

Supplementary Information to the final rule also modifies the interim final rule's requirements around duplication of resources. Since recipients must ensure that the objective of the broadband projects is to serve locations with an identified need for additional broadband investment, the final rule provides that, to the extent recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable service at speeds of at least 100 Mbps download speed and 20 Mbps upload speed, recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that is not met by existing federal or state funding commitments. Recipients must also ensure that SLFRF funds will not be used for costs that will be reimbursed by the other federal or state funding streams.

Cybersecurity

Public Comment: Several commenters expressed concern about the cybersecurity of new broadband projects funded with SLFRF funds and urged Treasury to prohibit recipients from utilizing SLFRF funds to procure equipment from certain providers from the People's Republic of China that may pose a national security risk. These commenters pointed out that the 2019 National Defense Authorization Act (NDAA) and the FCC's Universal Service Fund have similar prohibitions. Further, several commenters requested that Treasury explicitly include cybersecurity costs as an eligible use for broadband infrastructure investment given the growing threat of cyber-attacks and cyber-intrusions into the nation's infrastructure.

Treasury Response: Treasury highlights that investments in broadband infrastructure must be carried out in ways that comply with applicable federal laws, including the 2019 NDAA. Among other requirements contained in 2 CFR part 200, 2 CFR 200.216 implements certain provisions of the NDAA and contains prohibitions on the use of federal financial assistance to procure or obtain certain telecommunications and video surveillance services or equipment provided or produced by designated entities, including certain entities owned or controlled by the People's Republic of China. In addition, 2 CFR 200.471 provides that certain telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable.

Further, the final rule allows for modernization of cybersecurity for existing and new broadband infrastructure as an eligible use under sections 602(c)(1)(D) and 603(c)(1)(D) as such investments are necessary for the reliability and resiliency of broadband infrastructure.[345] Recipients may provide necessary investments in cybersecurity, including modernization of hardware and software, for existing and new broadband infrastructure regardless of their speed delivery standards. The final rule maintains the interim final rule's provision that allows for broader modernization of cybersecurity, including hardware, software, and protection of critical infrastructure as an eligible provision of government services, to the extent of revenue loss due to the pandemic, under sections 602(c)(1)(C) and 603(c)(1)(C).

Use of Funds To Meet Non-Federal Match Under the Infrastructure Investment and Jobs Act

The Infrastructure Investment and Jobs Act specifies that, except as otherwise provided, an entity using funding under section 60102 of the law for broadband deployment ''shall provide, or require a subgrantee to provide, a contribution, derived from non-Federal funds (or funds from a Federal regional commission or authority) . . . of not less than 25 percent of project costs.'' [346] It further states that the matching contribution may include funds provided to an eligible entity or subgrantee under the American Rescue Plan Act for the purpose of deployment of broadband service, which includes funds provided under the SLFRF program.

SLFRF and the program established under section 60102 of the Infrastructure Investment and Jobs Act are separate programs with separate requirements. While section 60102 allows states and other eligible entities to use SLFRF funds as the source of matching funds for broadband deployment, the requirements of the SLFRF program still apply. As such, recipients that use SLFRF funds to meet the section 60102 matching requirement will continue to be subject to the requirements of the SLFRF program.

[345] For more on the importance of cybersecurity to the reliability and resiliency of broadband networks, see: Federal Communications Commission, *https://docs.fcc.gov/public/attachments/FCC-10-63A1.doc;* Brookings Institute, Protecting the Cybersecurity of America's Networks (February 11, 2021), *https://www.brookings.edu/blog/techtank/2021/02/11/protecting-the-cybersecurity-of-americas-networks/.*

[346] *See* Infrastructure Investment and Jobs Act, Public Law 117–58 (2021).

III. Restrictions on Use

While recipients have considerable flexibility to use funds to address the diverse needs of their communities, some restrictions on use of funds apply. The ARPA includes two statutory provisions that further define the boundaries of the statute's eligible uses. First, section 602(c)(2)(A) of the Social Security Act provides that states and territories may not ''use the funds . . . to either directly or indirectly offset a reduction in . . . net tax revenue . . . resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax . . . or delays the imposition of any tax or tax increase.'' Second, sections 602(c)(2)(B) and 603(c)(2) prohibit all recipients, except Tribal governments, from using funds for deposit into any pension fund. These restrictions support use of funds only for the congressionally permitted purposes described in the Eligible Uses section by providing a backstop against the use of funds for purposes outside of the eligible use categories provided for in the statute.

In addition to the restrictions on use of funds provided for in the ARPA statute, the interim final rule noted that several uses of funds would be ineligible under any eligible use category, including as a response to the public health and negative economic impacts of the pandemic or as a ''government service'' under the revenue loss eligible use category. Specifically, use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment were ineligible uses of funds under the eligible use categories for public health and negative economic impacts and revenue loss. These restrictions apply to all recipients.

Recipients should note that restrictions on use of funds for debt service, to replenish financial reserves, or to satisfy an obligation arising from a judicial settlement or judgment apply to all eligible use categories, not just the eligible use categories in which they were discussed in the interim final rule.

Recipients are also subject to other restrictions on use of funds in the ARPA, the Award Terms and Conditions, and other federal laws. As discussed further below, uses of funds may not conflict with the overall statutory purpose of the ARPA to reduce the spread of COVID–19. Per the Award Terms and Conditions, recipients must adopt and abide by policies to prevent conflicts of interest. Finally, recipients are reminded that other federal laws

also apply to uses of funds, including environmental and civil rights laws.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule consolidates these restrictions on use of funds into one section and makes clear that they apply to all eligible use categories and any use of funds under the program by recipients to whom each specific restriction applies.

This section discusses the aforementioned restrictions, public comments received, and Treasury's response to these comments. For clarity, Treasury has divided the following discussion into (A) statutory restrictions under the ARPA, which include (1) offsetting a reduction in net tax revenue, and (2) deposits into pension funds, and (B) other restrictions on use, which include (1) debt service and replenishing reserves, (2) settlements and judgments, and (3) general restrictions.

A. Ineligible Uses of Funds Under the ARPA Statute

1. Offset a Reduction in Net Tax Revenue

For states and territories (recipient governments [347]), section 602(c)(2)(A)—the offset provision—prohibits the use of SLFRF funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation [348] during the covered period. If a state or territory uses SLFRF funds to offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, the ARPA provides that the state or territory must repay to Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount of SLFRF funds received by the state or territory. A state or territory that uses SLFRF funds to offset a reduction in net tax revenue does not forfeit its entire allocation of SLFRF funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-SLFRF funding.

The interim final rule implements these conditions by establishing a framework for states and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—*i.e.,* cover the cost of—any reduction in net tax revenue resulting from such changes. The interim final rule recognizes three sources of funds that may offset a reduction in net tax revenue other than SLFRF funds: Organic revenue growth, increases in revenue due to policy changes (*e.g.,* an increase in a tax rate), and certain cuts in spending.

Specifically, the interim final rule establishes a step-by-step process for determining whether, and the extent to which, SLFRF funds have been used to offset a reduction in net tax revenue, based on information reported by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to ''pay for'' with sources other than SLFRF funds (total value of revenue reducing changes).
- Second, the interim final rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which it is reporting. If the recipient government's actual tax revenue is greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.
- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than SLFRF funds. These are:
  - State or territory tax changes that would increase any source of general fund revenue, such as a change that would increase a tax rate; and
  - Spending cuts in areas not being replaced by SLFRF funds.

The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (*i.e.,* fiscal year 2019 tax revenue adjusted for inflation). This ''revenue reduction cap,'' together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts along with an explanation of such amounts. This process is discussed in greater detail in section Remediation and Recoupment of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with SLFRF funds.

Overview of Comments: Many commenters supported the framework established under the interim final rule. These commenters argued that the offset provision, and the interim final rule's implementation of the offset provision, was essential to ensuring SLFRF funds are used in a manner consistent with the statute's defined eligible uses and, in particular, to support the use of SLFRF funds to build public sector capacity. Several commenters argued that the framework should be made more restrictive; for example, some comments advocated that the offset provision be applied to local governments.

Other commenters argued that the offset provision and the interim final rule's implementation of the offset provision is too restrictive, with some asserting that the offset provision prohibits states from making changes to reduce taxes. Many of these commenters argued that the offset provision presents constitutional concerns. These commenters asserted that the offset provision is ambiguous and the restriction is unrelated to the purpose of the ARPA. These commenters also

[347] In this sub-section, ''recipient governments'' refers only to states and territories. In other sections, ''recipient governments'' refers more broadly to eligible governments receiving funding from the SLFRF.

[348] For brevity, this phrase is referred to as ''changes in law, regulation, or interpretation'' for the remainder of this **SUPPLEMENTARY INFORMATION.**

argued that the generous amount of SLFRF funds provided to those governments gave recipient governments little choice as to whether to accept the SLFRF funds and, as a result, the offset provision is coercive. In describing these concerns and arguments, several of these commenters referenced litigation regarding the offset provision.[349] Many of these commenters also expressed concern regarding the interim final rule's implementation of the offset provision. Some of these commenters argued that Treasury lacked the authority to implement the provision, asserting that the significance of the provision required Congress to make an explicit delegation of rulemaking authority and provide clearer principles by which Treasury should implement the provision. Finally, one commenter argued that the offset provision should only apply if the recipient expressly and intentionally uses SLFRF funds to offset a reduction in revenue, arguing that the term ''offset'' implies a deliberate use SLFRF funds to ''pay for'' a tax cut.

As discussed in the interim final rule, the offset provision does not prevent a recipient government from enacting a broad variety of tax changes. Rather, the offset provision prevents a recipient government from using SLFRF funds to offset a revenue reduction resulting from a tax cut. A recipient government would only be considered to have used SLFRF funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the recipient government could not identify sufficient funds from sources other than SLFRF funds to offset the reduction in net tax revenue. Only if sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, will the remaining amount not covered by these sources be considered to have been offset by SLFRF funds, in contravention of the offset provision. Consistent with the statutory text, the approach taken in the interim final rule recognizes that, because money is fungible, even if SLFRF funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for the state's or territory's funds that would otherwise have been needed to cover the costs of the reduction. As discussed below, the scope of changes in law, regulation, or interpretation is further limited to those that the recipient government voluntarily enacted during the covered period.

Congress has the authority under the Spending Clause in Article I, section 8 of the Constitution to specify the permissible and impermissible uses of federal grants. The Supreme Court has repeatedly ''upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the 'general Welfare.' '' [350] ''The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place.'' [351] Assertions that the amount of SLFRF funds are sufficiently large to be coercive are inconsistent with the Supreme Court's reasoning in *NFIB,* which distinguished between conditions placed on new federal funds and conditions placed on existing federal funds and not based on the size of funds.[352] Further, the conditions placed on the use of SLFRF funds under the ARPA—both the eligible uses and additional limitations on deposits into pension funds and the offset provision—were well known to recipient governments prior to recipient governments requesting to receive SLFRF funds. Finally, the ARPA provides Treasury with the express authority ''to issue such regulations as may be necessary or appropriate to carry out'' section 602, which includes the offset provision.

A number of commenters expressed concern regarding the burden associated with complying with the offset provision and the interim final rule. Similarly, other commenters argued that the framework provided in the interim final rule complicated implementation of the offset provision. Treasury took several steps to minimize burden for recipient governments in the interim final rule. For example, the interim final rule incorporates the types of information and modeling already used by states and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, states and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of SLFRF funds based on information they likely have or can readily obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of SLFRF funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or interpretation, making the funds potentially subject to recoupment. To further reduce burden, Treasury is considering whether the scope of reporting requirements can be further tailored.

As described in greater detail below, Treasury is finalizing its implementation of the offset provision largely without change. This approach is consistent with the text of the ARPA. The remainder of this section discusses and responds to comments on specific aspects of the framework.

1. Definitions

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation.'' Consistent with this language, the interim final rule defines a ''covered change'' to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Thus, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. For example, covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period.[353] Changed

[349] *See, e.g., State of West Virginia* v. *U.S. Department of the Treasury,* No. 7:21–cv–00465–LSC, 2021 WL 2952863 (N.D. Ala. Jul. 14, 2021); *State of Ohio* v. *Yellen,* No. 1:21–cv–181, 2021 WL 2712220 (S.D. Ohio Jul. 1, 2021).

[350] *National Fed'n of Indep. Bus.* v. *Sebelius (NFIB),* 567 U.S. 519, 580 (2012) (plurality opinion); see, *e.g., South Dakota* v. *Dole,* 483 U.S. 203, 206–208 (1987); *Gruver* v. *Louisiana Bd. of Supervisors for Louisiana State Univ. Agric. & Mech. Coll.,* 959 F.3d 178, 183 (5th Cir.), cert. denied, 141 S. Ct. 901 (2020). For additional discussion of these issues, *see, e.g., Brief Reply for Appellants, Ohio* v. *Yellen,* No. 21–3787 (6th Cir. Oct. 26, 2021).

[351] *Sabri* v. *United States,* 541 U.S. 600, 608 (2004).

[352] The new federal funds offered by the Affordable Care Act totaled $100 billion per year. Even the dissenting Justices agreed that ''Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion,'' although they disagreed with the majority about whether that funding condition was severable. NFIB at 687–688 (joint dissent).

[353] For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the federal government's expansion of the EITC in the ARPA *See, e.g.,* Tax

administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered period. The operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only changes within the control of the state or territory are considered covered changes. Finally, covered changes do not include changes that simply conform with recent changes in federal law (including those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program).

Scope of Covered Changes

Public Comment: Several commenters argued that the definition of covered change, and thus the limitations of the offset provision, should apply to subsidies for businesses. Similarly, other commenters requested that Treasury clarify that the offset provision applies to tax abatements and reductions in corporate taxes, even if administered by a sub-unit of the recipient government. Citing to empirical research and other evidence, these commenters argued that these types of economic development policies were poorly administered, reduced public sector capacity, and were ineffective at achieving stated objectives of creating jobs, increasing income, and increasing economic growth. On the other hand, some commenters argued that, because subsidies were economically similar to some tax cuts, neither action should be considered a covered change and subject to the offset provision. Finally, other commenters requested that Treasury clarify whether covered changes must be broad-based policies or whether administrative decisions applicable to individuals would be considered covered changes.

Treasury Response: Section 602(c)(2)(A) applies to any change that ''reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise or delays the imposition of any tax or tax increase.'' Accordingly, and consistent with this statutory text, the final rule applies to covered changes that reduce any tax, which can include tax abatements, but does not apply to loans, grants, or other types of interventions that do not reduce tax revenue.[354] In addition, by including changes in regulation or administrative interpretation, in addition to changes in law, within the scope of the offset provision, the ARPA recognizes that a recipient government may make a covered change through its legislature or may delegate the authority to make a covered change including, but not limited to, to a sub-unit of government. Treasury has revised the definition of ''covered change'' in the final rule using the statutory language above to make clear that the offset provision only applies to such changes in law, regulation, or administrative interpretation. With respect to the question of whether covered changes could include administrative decisions applicable to individuals, as discussed above, a covered change includes a change in law, regulation, or administrative interpretation that reduces any tax. Such changes may apply to one or more individuals or entities, provided that—consistent with the statutory text—they result from a change in law, regulation, or administrative interpretation.

Prior Enactment and Phase-In

Public Comment: A number of commenters expressed concern, or requested clarification, regarding changes that were enacted prior to the covered period but take effect or phase-in during the covered period. Several commenters argued that the definition of covered change should include changes that were made prior to the covered period but that phase-in during the covered period.

Treasury Response: As discussed above, the offset provision is triggered by a reduction in net tax revenue resulting from ''a change in law, regulation, or administrative interpretation'' made during the covered period. Consistent with the statutory text, ''covered change'' is defined to include any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period.

Conformity

Public Comment: A number of commenters requested clarification on the scope of covered changes. Specifically, several commenters requested clarification on the scope of changes that would be considered as conforming to recent changes in federal law. These commenters requested that Treasury clarify whether actions to selectively conform with federal law would be considered covered changes and requested clarification regarding the extent to which changes would be considered ''recent.'' For example, these commenters requested clarification regarding conformance with the Global Intangible Low-Taxed Income provision of the 2017 Tax Cuts and Jobs Act. Some commenters further argued that changes that selectively conform or decouple from the Internal Revenue Code should be included within scope of covered changes and thus subject to the offset provision.

Treasury Response: The final rule maintains the treatment of changes that simply conform with recent changes in federal law, such as those to conform to recent changes in federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program [355] and including other changes over the past several years. Regardless of the particular method of conformity and the effect on net tax revenue, Treasury views such changes as permissible under the offset provision.

Accordingly, and for the reasons discussed above, Treasury is maintaining the definition of covered change without change.

Tax revenue. The interim final rule's definition of ''tax revenue'' is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[356] It provides a consistent, well-established definition with which states and territories will be familiar and is consistent with the approach taken in section Revenue Loss of this **SUPPLEMENTARY INFORMATION** describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act regarding revenue loss. A number of commenters expressed concern and requested clarification regarding the definition of ''tax revenue.'' These comments and responses are discussed in section Revenue Loss of this Supplemental Information and, for the reasons discussed above, Treasury is finalizing the definition of tax revenue without

Policy Center, How do state earned income tax credits work?, *https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/* (last visited May 9, 2021).

[354] Assistance must be consistent with eligible uses of SLFRF funds. *See* section Eligible Uses of this **SUPPLEMENTARY INFORMATION.**

[355] *See* Statement on State Fiscal Recovery Funds and Tax Conformity, April 7, 2021, available at *https://home.treasury.gov/news/press-releases/jy0113.*

[356] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, *https://www.census.gov/programs-surveys/state/about/glossary.html* (last visited Apr. 30, 2021).

change and maintaining a consistent definition of ''tax revenue.'' [357]

Baseline. For purposes of measuring a reduction in net tax revenue, the interim final rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline is calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[358]

Public Comment: Some commenters expressed concern regarding the choice of FY 2019 as the baseline, arguing that the choice lacked justification and would make the offset provision more restrictive as applied to recipient governments that experienced a decline in revenue independent of making any covered changes.

Treasury Response: Measuring a ''reduction'' in net tax revenue requires identification of a baseline. In other words, a ''reduction'' can be assessed only by comparing two amounts. The Act defines ''covered period'' to begin on March 3, 2021, and thus the baseline year must end prior to March 3, 2021. As discussed in the interim final rule, FY 2019 is the last full fiscal year prior to the COVID–19 public health emergency, and thus is consistent with the statutory definition and does not include the extraordinary effects of the pandemic that began in 2020. Further, as discussed above, the interim final rule recognizes three potential ways that a recipient government may offset or ''pay for'' a reduction in net tax revenue due to a covered change: Increases in taxes, decreases in spending, and organic revenue growth. U.S. gross domestic product rebounded to exceed its pre-pandemic level in 2021,[359] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels and provides recipients with flexibility to identify organic growth as a permissible offset. Finally, this baseline year is consistent with the approach directed by sections 602(c)(1)(C) and 603(c)(1)(C), which identify the ''most recent full fiscal year of the [state, territory, or Tribal government] prior to the emergency'' as the comparator for measuring revenue loss. For these reasons, Treasury is finalizing the definition of ''baseline'' without change.

The interim final rule includes several other definitions that are applicable to the implementation of the offset provision, such as the term ''reporting year.'' [360] Commenters did not express concern regarding other definitions in the interim final rule.

2. Framework

The interim final rule provides a step-by-step framework, to be used in each reporting year, to determine whether a state or territory used SLFRF funds to offset a reduction in net tax revenue. Consistent with section 602(c)(2) and the interim final rule, the final rule applies to states and territories:

(1) *Covered changes that reduce tax revenue.* Under the interim final rule, a recipient government identifies and values covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The interim final rule states that the value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures these effects relative to a current law baseline. If the recipient would prefer, the covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s).[361] Further, estimation approaches may not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework.

Estimation

Public Comment: A number of commenters expressed concern that estimating the value of covered changes required a number of assumptions and that the actual effects of covered changes on tax revenue would be difficult to predict. Several commenters expressed support for the interim final rule's approach to dynamic scoring methodologies, and one commenter argued that the final rule should prohibit the use of prior cash balances in calculations of permissible tax cuts.

Treasury Response: Treasury recognizes that estimating the effects of covered changes requires assumptions and that many other factors influence the amount of tax revenue received. The interim final rule addresses these concerns in several ways. First, in general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, by relying on scoring methodologies that do not incorporate projected effects of macroeconomic growth, the estimation of the value of covered changes relies on fewer assumptions and thus provide greater consistency among states and territories. Finally, as discussed below, the interim final rule includes a de minimis threshold, below which the sum of covered changes will be deemed not to have any revenue-reducing effects.

Timing of the Impact of Covered Changes

Public Comment: Several commenters expressed concern that recipient governments, to evade the offset provision, may backload the costs of certain covered changes outside of the covered period, and advocated that covered changes be instead evaluated as the net present value in the year that the covered change is enacted. These commenters argued that some tax cuts could have effects on tax revenue for many decades or could be structured to take effect after the end of the covered period.

Treasury Response: As discussed in section Timeline for Use of SLFRF Funds, SLFRF funds must be used to cover costs incurred prior to December 31, 2024. Accordingly, SLFRF funds

[357] As discussed in section Revenue Loss of this Supplementary Information, for purposes of measuring revenue lost due to the pandemic under sections 602(c)(1)(C) and 603(c)(1)(C), recipients must adjust the amount of revenue lost to reflect changes that resulted from a tax increase or decrease. These adjustments do not apply to or affect the definition of tax revenue.

[358] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, *https://www.bea.gov/data/prices-inflation/gdp-price-deflator* (last visited Apr. 30, 2021). The FY 2019 baseline revenue is adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

[359] Economy Statement by Catherine Wolfram, Acting Assistant Secretary for Economy Policy, for the Treasury Borrowing Advisory Committee November 1, 2021 (Nov. 1, 2021), *available at https://home.treasury.gov/news/press-releases/jy0453.*

[360] One commenter requested clarification that references to fiscal year refer to the fiscal year of the recipient. ''Reporting year'' is defined in the interim final rule and final rule to mean ''a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.''

[361] By permitting recipient governments to use actual or estimated values, the interim final rule and final rule provide flexibility to recipients and thus minimizes burden.

generally would not be able to offset a reduction in net tax revenue occurring after December 31, 2024.

For these reasons, Treasury is maintaining this element of the interim final rule without change.

(2) *In excess of the de minimis.* Under the framework established in the interim final rule, after establishing that a covered change occurred, the recipient government next calculates the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de minimis level, the recipient government is deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue. Under the interim final rule, the de minimis level is calculated as 1 percent of the reporting year's baseline.

Public Comment: Many commenters supported the inclusion of the de minimis, noting that the de minimis protects recipients from penalty resulting from minor or incidental changes, minimizes administrative burden, and enhances predictability of the application of the offset provision. Some commenters expressed concern that the fixed threshold could result in cliff effects.

Treasury Response: A clear de minimis threshold supports recipient governments' compliance with the offset provision. A de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. In other words, states and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as ''resulting from'' tax law changes. However, a de minimis does not automatically result in consequences under the offset provision, since a recipient government could demonstrate that other, non-SLFRF funds to offset a net reduction in tax revenue. Accordingly, any cliff effects associated with a clear de minimis threshold are mitigated by other aspects of the framework.

Public Comment: Commenters expressed a range of views regarding the amount of the de minimis. Some commenters argued that the de minimis was too generous, noting that the choice of 1 percent could, in some cases, permit reductions in net tax revenue of hundreds of millions of dollars. These commenters advocated that the de minimis be lowered (*e.g.,* to 25 basis points) or be tied to a fixed amount. Other commenters argued that the choice of de minimis was not well supported by the statute, advocated for a larger de minimis and suggested that the amount be tied to the recipient government's total expenditures in the prior fiscal year.

Treasury Response: Treasury adopted a de minimis threshold as an administrative accommodation for the reasons discussed above. As discussed in the interim final rule, Treasury determined that the 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies and was determined by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[362]

For these reasons, Treasury is adopting the 1 percent de minimis without change.

(3) *Safe harbor.* Next, under the interim final rule, if the revenue reduction caused by the covered changes exceeds the 1 percent de minimis threshold, the recipient government compares the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of SLFRF funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not been reduced, the offset provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of any covered changes. One commenter argued that the offset for organic growth be adjusted to reflect population growth. To minimize administrative burden, and for the reasons discussed above, Treasury is maintaining the measurement of actual tax revenue without adjustment for population growth.

(4) *Consideration of other sources of funding.* The recipient government will then identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. Recipient governments should use the same approach to identify and value covered changes that increase tax revenue as applied to covered changes that reduce tax revenue. For the reasons discussed above, Treasury is adopting these aspects of identifying and valuing covered changes without change.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays in an area where the recipient government has not spent SLFRF funds. To better align with existing reporting and accounting, the interim final rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent SLFRF funds on that same department, agency, or authority. If the recipient government has not spent SLFRF funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have spent SLFRF funds in such department, agency, or authority, the SLFRF funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of SLFRF funds spent on the department, agency, or authority would count. This approach—allowing only spending reductions in areas where the recipient government has not spent SLFRF funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using SLFRF funds to supplant state or territory funding in the eligible use

[362] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004–2017.

areas, and then using those state or territory funds to offset tax cuts. Such an approach helps ensure that SLFRF funds are not used to ''indirectly'' offset revenue reductions due to covered changes.

Department, Agency, or Authority

Public Comment: Several commenters supported the interim final rule's approach to considering spending cuts at the department, agency, or authority level, on the basis that this approach is supported by the statutory language prohibiting SLFRF funds from being used to ''directly or indirectly'' offset a reduction in net tax revenue. On the other hand, some commenters argued that the methodology for identifying offsetting spending cuts was too restrictive; specifically, that measurement at the agency or department-level may not adequately account for the size and various programs that could occur in one agency or department. One commenter argued that recipient governments should instead be permitted to consider spending cuts on a more granular sub-unit of a department but noted that this additional flexibility would come at the cost of transparency and clarity.

Treasury Comment: Treasury recognizes that some recipients may vary in their budgeting processes, with some budgeting on a department level and others budgeting at more or less granular sub-units of government. Relying on spending at a department, agency, or authority level allows recipient governments to report how SLFRF funds have been spent using reporting units already incorporated into their budgeting process.

Spending Cuts Baseline

Under the interim final rule, to calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding SLFRF funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offset other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding SLFRF funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue.

Public Comment: Several commenters expressed concern regarding the measurement of spending cuts relative to the recipient's FY 2019, for example arguing that the choice did not take into account increases in spending in 2020. As one commenter noted, the fiscal year 2020 required extraordinary intervention by recipient governments and the ongoing public health emergency continues to require extraordinary intervention.

Treasury Response: FY 2019 provides a reasonable and relatively generous baseline for considering spending because it is the last full fiscal year prior to the COVID–19 public health emergency and governments' extraordinary efforts to address the impact of the pandemic. This approach also aligns with the FY 2019 baseline for measuring revenue loss. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of states and territories.

For the reasons discussed above, Treasury is adopting the approach taken in the interim final rule without change.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used SLFRF funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of the reduction revenue due to covered changes that a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[363] In the event that the baseline is above actual tax revenue but the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, a recipient government may request reconsideration of any amounts identified in a notice from Treasury as subject to recoupment under this framework. Comments and responses to the recoupment process are discussed in section Remediation and Recoupment of this Supplemental Information.

3. Reporting

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, recipient governments are required to report certain information. The interim final rule indicated that Treasury would provide additional guidance at a later date and that, on an annual basis, it expected each recipient government would be required to provide the following information:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change; and
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the interim final rule.

Since the adoption of the interim final rule, Treasury has provided guidance on reporting regarding eligible uses and has required recipient governments to indicate whether they have made covered changes and the value of such changes.[364]

Reporting Burden

Public Comment: Some commenters argued that the framework for identifying and reporting impermissible offsets was burdensome and that the burdens should be accounted for under Executive Order 13132 (Federalism, August 4, 1999).

Treasury Response: Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision. Specifically, under this approach, a recipient would only be required to report information to the extent needed to determine whether SLFRF funds had been used to offset a reduction in net tax revenue. For example, a recipient government would be required to report

[363] This cap is applied in section 35.8(c) of the final rule, calculating the amount of funds used in violation of the tax offset provision.

[364] *See* Reporting Guidance, Section C.11, available at *https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf.*

information regarding permissible offsets only if it had also reported covered changes that were in excess of the de minimis and had reported a net reduction in tax revenue. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

As discussed in section Regulatory Analyses of this Supplemental Information, Treasury maintains that the final rule does not have federalism implications within the meaning of Executive Order 13132 (Federalism, August 4, 1999). In the ARPA, Congress requires states and territories to repay the Secretary for amounts used in violation of the prohibition on using SLFRF funds to offset reductions in net tax revenue, and it authorizes the Secretary to issue regulations to carry out this limitation and other requirements of the statute. Section 6(b) of Executive Order 13132 contemplates that certain regulations will be required by statute, as is the case with the interim final rule and the final rule, in which case section 6(b)(2)(B)'s requirement to include a federalism summary impact statement in the Supplementary Information to the regulation does not apply. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule.

Reporting Transparency

Public Comment: Several commenters argued that information supporting the net tax offset calculation should be publicly available. Some of these commenters requested that reporting be made available in a machine-readable format, and others advocated that recipient governments disclose this information on their local budget agency's website. These commenters argued that making information regarding tax changes publicly available would increase transparency and accountability. Further, several commenters suggested that Treasury provide a mechanism for citizens to register their concerns about particular tax actions.

Treasury Response: As discussed in other sections, reporting requirements promote transparency and accountability for the general public and constituents of recipient governments to understand how state, local, and Tribal governments have used SLFRF funds. Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide), which addresses the particular content and form of required reporting. Treasury will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content and will continue to consider how reporting can best support transparency and accountability while minimizing recipient administrative burden. Further, as discussed in the section Remediation and Recoupment, Treasury may address potential violations of this final rule based on both information submitted from recipients, either through quarterly reports or self-reporting, and from other sources of information (*e.g.,* information submitted from the public).

2. Deposit Into Pension Funds

Background: Subsection 602(c)(2)(B) of the Social Security Act provides that ''[n]o State or territory may use funds made available under this section for deposit into any pension fund.'' Similarly, subsection 603(c)(2) of the Social Security Act provides that ''[n]o metropolitan city, nonentitlement unit of local government, or county may use funds made available under this section for deposit into any pension fund.''

For purposes of this restriction on pension deposits, the interim final rule defined deposit to mean ''an extraordinary payment of an accrued, unfunded liability.'' The interim final rule also specified that a deposit does not include routine contributions made as part of a payroll obligation, such as the normal cost component of a pension contribution or the component that consists of amortization of unfunded liabilities calculated by reference to the employer's payroll costs. The interim final rule applied the restriction on pension deposits to all recipients.

Public Comment: Several commenters observed that the statutory restriction on deposits into pension funds does not apply to Tribal governments.

Treasury Response: In response, Treasury is clarifying in the final rule that the pension restriction does not apply to Tribal governments.

Public Comment: Treasury also received a comment expressing concern that the interim final rule permitted recipients to make a larger than usual pension contribution, so long as the timing of that contribution aligns with the historical timing of contributions.

Treasury Response: The interim final rule prohibited the use of SLFRF funds from the ARPA to make extraordinary payments, and the **SUPPLEMENTARY INFORMATION** to the interim final rule said that a payment would be an extraordinary payment if it reduces a liability incurred prior to the start of the COVID–19 public health emergency and occurs outside the recipient's regular timing for making the payment. At the same time, however, as suggested by the comment Treasury received, a payment made at the regular time for pension contributions may very well be an extraordinary payment, for example, if it is larger than a regular payment would have been. Such a payment would be a restricted use.

Public Comment: Other commenters asked which pension contributions are permitted.

Treasury Response: To be an eligible use of SLFRF funds, a use must (1) be eligible under one of the eligible use categories and (2) not contravene any of the applicable restrictions on uses of funds. Some pension contributions may be eligible because they both fit within an eligible use category and do not contravene the restriction on deposits into pension funds (*i.e.,* they are not an extraordinary payment of an accrued, unfunded liability). For example, payroll and covered benefits for public health and safety staff responding to COVID–19 are an eligible use of funds to respond to the public health and negative economic impacts of the pandemic; routine pension contributions as part of an employee's regular covered benefits are permissible under that eligible use category.

B. Other Restrictions on Use of Funds

1. Debt Service and Replenishing Financial Reserves

The **SUPPLEMENTARY INFORMATION** to the interim final rule provided that debt service is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of government services to the extent of revenue loss.[365] The interim final rule also provided that replenishing financial reserves (*e.g.,* rainy day funds) is not an eligible use of funds either to respond to the public health emergency or its negative economic impacts or as a provision of

[365] ''[G]overnment services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services.'' 86 FR 26796–97 (May 17, 2021).

government services to the extent of revenue loss.[366]

As explained in greater detail below, Treasury, in the final rule, has retained these restrictions and is clarifying that these restrictions on the use of SLFRF funds apply to all eligible use categories.

Public Comments

Several commenters suggested that debt service and reserve replenishment should qualify as the provision of a government service and be an eligible use of funds, up to the amount of revenue loss due to the pandemic. Many commenters indicated that they had been forced to borrow money or dip into reserve funds to continue providing government services during the public health emergency and that using SLFRF funds for resulting debt service or reserve replenishment costs should therefore be considered a government service.

Many comments from Tribal governments noted that their governments depend on revenue from Tribal enterprises to pay government debts and provide services. The comments suggest that it should be an eligible use of SLFRF to replace lost revenue from these enterprises that would typically be used to pay debt service costs. Other commenters argued that paying the interest or principal on debt should in some cases be considered provision of government services and an eligible use of funds as such expenditures facilitate the provision of government services.

Some commenters argued that debt costs or reserve drawdowns during the public health emergency constitute a negative economic impact to recipient governments, and thus debt service or reserve replenishment should be an eligible use to respond to that negative economic impact. For example, several commenters suggested that there should be a specific carve-out allowing the use of SLFRF funds for debt service on debt incurred for government services after January 27, 2020, the start of the public health emergency, or short-term debt incurred for this purpose. Others suggested that recipient governments should be able to service debt, up to the amount of debt incurred in direct response to the pandemic. These commenters generally reasoned that the cost of responding to the public health emergency and its negative economic impacts prior to APRA's passage constitutes a negative economic impact of the pandemic.

Some commenters argued that the specific impacts of the pandemic on the travel, tourism, and hospitality sector had affected their ability to meet debt service costs. For example, some commenters explained that specific tax streams (*e.g.,* hotel room taxes) or revenue sources (*e.g.,* hospitality generally) are tied to specific debt instruments and that these revenue sources had declined during the public health emergency; commenters argued that this constitutes a negative economic impact that SLFRF funds should be permitted to address.

Finally, some commenters questioned why servicing debt incurred after March 3, 2021 for an otherwise eligible project (*e.g.,* a broadband infrastructure project) would not be an eligible use of funds.

On the other hand, many commenters expressed support for the interim final rule's prohibition on use of funds for debt service and reserve replenishment. These commenters largely argued that SLFRF funds should be used to provide current services to communities in response to the public health emergency and that use of funds for debt service or reserve replenishment represented, respectively, payment for past costs or savings for potential future costs. In addition to the prohibition on debt service and reserve replenishment, some commentors suggested that the final rule should also prevent funds from being used for state UI trust fund replenishment or for paying off debt owed through UI trust funds. One commenter argued that Treasury should further restrict recipient governments, for example by preventing recipients from making cuts to an allowable budget item, filling the budget gap with SLFRF funds, and then using the savings from the initial cut for debt service or reserve replenishment.

Treasury Response

The final rule maintains the restriction on the use of funds for debt service or reserve replenishment for the reasons described below and clarifies that this restriction applies to all eligible use categories.

First, debt service and reserve replenishment costs do not constitute the provision of services to constituents. As noted in the interim final rule, financing expenses—such as issuance of debt or payment of debt service—do not provide services or aid to citizens. Similarly, contributions to rainy day funds and similar financial reserves constitute savings for future spending needs. As such, these expenses do not respond to the current and ongoing public health and negative economic impacts of the pandemic, nor do they provide a government service.

Second, payments from the SLFRF are intended to be used prospectively (see section Timeline for Use of SLFRF Funds). The interim final rule provided that funds may be used for costs incurred beginning on March 3, 2021, which Treasury has maintained in the final rule. Use of funds for debt service on indebtedness issued prior to March 3, 2021 necessarily entails using funds for costs incurred during prior time periods, rather than the present response to the public health emergency and its negative economic impacts or to provide government services.

Third, SLFRF funds provide recipients with substantial latitude to use funds to support the diverse needs in their communities. With SLFRF resources available, recipients have less need to incur debt for otherwise-eligible SLFRF uses.

Finally, given the strong performance of overall revenues and low municipal bond yields, state and local governments generally do not face high levels of fiscal stress. Limits on debt service or replenishment of reserves would not have a substantial impact on recipients' ability to provide services. The ratio of state and local debt-to-GDP, which spiked briefly during the pandemic, has recovered to its pre-pandemic level and remains well below levels seen during the Great Recession.[367]

2. Settlements and Judgments

The interim final rule also provided that satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding would not be an eligible use of funds to respond to the public health and negative economic impacts of the pandemic or as a government service provided under the revenue loss eligible use category. However, if the judgment or settlement requires the recipient to provide services that are otherwise eligible under an SLFRF eligible use category, specifically if the settlement or judgment requires the recipient to provide services to respond to the COVID–19 public health emergency or its negative economic impacts or to provide government services, then those costs are eligible uses of SLFRF funds.

[366] "In addition, replenishing financial reserves (*e.g.,* rainy day or other reserve funds) would not be considered provision of a government service, since such expenses do not directly relate to the provision of government services."

[367] Table Z.1 of the Financial Accounts of the United States, Board of Governors of the Federal Reserve System, and Table 1.1.5 of National Income and Product Accounts, Bureau of Economic Analysis.

In other words, satisfaction of a settlement or judgment itself is not itself an eligible use of funds, unless the settlement requires the recipient to provide services or incur other costs that are eligible uses of SLFRF funds.

In the final rule, Treasury is maintaining the interim final rule approach and clarifying that it applies to all eligible use categories and any use of funds under the SLFRF program.

3. General Restrictions

In addition to the above restrictions, there are three general restrictions that apply to SLFRF funds. These restrictions, which reflect existing laws and regulations, the Award Terms and Conditions, and application of the ARPA statute, applied under the interim final rule, and they continue to apply under the final rule.

A primary purpose of the SLFRF in the ARPA is to support efforts to stop the spread of COVID–19.[368] As discussed above, recipients of SLFRF funds are required to comply with the Award Terms and Conditions established for the use of such funds. The interim final rule and final rule implement this objective by, in part, providing that recipients may use SLFRF funds for COVID–19 mitigation and prevention.[369] See section Public Health in Public Health and Negative Economic Impacts.

The CDC has provided recommendations and guidelines to help mitigate and prevent COVID–19 and has identified vaccines and masks as two of the best tools to prevent the spread of COVID–19. The interim final rule and final rule help support recipients in stopping the spread of COVID–19 through these recommendations and guidelines. Consistent with the purpose of the ARPA and as implemented through the interim final rule and final rule, a recipient may not use SLFRF funds for a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID–19. A program or service that imposes conditions on participation or acceptance of the service that would undermine efforts to stop the spread of COVID–19 or discourage compliance with recommendations and guidelines in CDC guidance for stopping the spread of COVID–19 is not a permissible use of SLFRF funds.

In other words, recipients may not use funds for a program that undermines practices included in the CDC's guidelines and recommendations for stopping the spread of COVID–19. This includes programs that impose a condition to discourage compliance with practices in line with CDC guidance (*e.g.,* paying off fines to businesses incurred for violation of COVID–19 vaccination or safety requirements), as well as programs that require households, businesses, nonprofits, or other entities not to use practices in line with CDC guidance as a condition of receiving funds (*e.g.,* requiring that businesses abstain from requiring mask use or employee vaccination as a condition of receiving SLFRF funds).

Second, a recipient may not use SLFRF funds in violation of the conflict of interest requirements contained in the Award Terms and Conditions or the Office of Management and Budget's Uniform Guidance, including any self-dealing or violation of ethics rules. Recipients are required to establish policies and procedures to manage potential conflicts of interest.[370] Treasury may provide further guidance on the types of activities or conflicts that the recipient's policies and procedures must cover.

Lastly, recipients should also be cognizant that federal, state, and local laws and regulations, outside of SLFRF program requirements, may apply. Recipients may not use revenue loss funds, for instance, to violate other background laws that limit the scope of activities that may be conducted as ''government services,'' including other state and federal laws. State and local procurement, contracting, and conflicts-of-interest laws and regulations may include applicable requirements, including, for example, required procurement processes for contractor selection or competitive price setting. Furthermore, recipients are also required to comply with other federal, state, and local background laws, including environmental laws[371] and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination on the basis of race, color, national origin, sex, (including sexual orientation and gender identity), religion, disability, or age, or familial status (having children under the age of 18).

IV. Program Administration Provisions

The interim final rule included several sections that described the processes and requirements for administering the program on an ongoing basis, specifically: Distribution of funds, transfer of funds, use of funds for program administration, reporting on the use of funds, and remediation and recoupment of funds used for ineligible purposes.

To enhance clarity, this **SUPPLEMENTARY INFORMATION** for the final rule organizes these issues into one section on Program Administration Provisions. Recipients should also consult Treasury's Compliance and Reporting Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance.

A. Payments in Tranches to Local Governments and Certain States

Section 602(b)(6)(A)(ii) of the Social Security Act authorizes the Secretary to withhold payment of up to 50 percent of the amount allocated to each state and territory for a period of up to 12 months from the date on which the state or territory provides its statutorily-required certification to the Secretary. The Social Security Act requires any such withholding be based on the unemployment rate in the state or territory as of the date of the certification.

Under the interim final rule, Treasury provided that it would withhold 50 percent of the amount allocated from any state that had an unemployment rate less than two percentage points above its unemployment rate in February 2020 as of the date the state submitted its initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act. Based on data available at the time of the issuance of the interim final rule, this threshold was expected to result in a majority of states being paid in two tranches. Treasury did not split the payments of any territories.

Public Comment: One commenter asked Treasury to allow a state to request release of the portion of the state's second tranche payment after the state could demonstrate that it had allocated the entirety of the first tranche, a need to continue ongoing programs, and a desire to avoid borrowing costs. Another commenter asked Treasury to clarify whether states that received half their funding in the

[368] *See* Sec. 602(a)(1); 603(a)(1); 602(c)(1); 603(c)(1).

[369] *See* 35.6(b); Coronavirus State and Local Fiscal Recovery Funds, 86 FR at 26786.

[370] Specifically, the Award Terms and Conditions provide that ''[r]ecipient understands and agrees it must maintain a conflict of interest policy consistent with 2 CFR 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 CFR 200.112.''

[371] An exception is statutes that do not apply unless explicitly stated, including, *e.g.,* the National Environmental Policy Act and the Davis-Bacon Act.

first payment would receive their second half payment within 12 months. Similarly, some recipients requested clarification on whether they could obligate second tranche funds before receipt or use second tranche funds for costs incurred prior to receipt.

Treasury Response: The final rule maintains the approach in the interim final rule with two modifications. As described in the interim final rule, splitting payments for most states provides consistency with payments to local governments and encourages states to adapt their use of funds to developments that arise in the course of the economic recovery. Moreover, SLFRF funds may be used for costs incurred during the period of performance. Recipients may use their jurisdiction's budgeting and procurement practices and laws to determine how and when second tranche funds may be obligated.

The final rule makes two adjustments for operational purposes. First, the final rule provides that Treasury expects to make all second tranche payments to states available beginning 12 months from the date that funding was first made available by Treasury (May 10, 2021) regardless of when each individual state submitted its initial certification. This should increase clarity and consistency on the timing of second tranche payments for both states and Treasury. Second, also to ease recipient states' administrative burden, the final rule strikes a requirement from the interim final rule that states must certify for their second tranche payments and file all required reports at least 30 days prior to the date on which their second payment is made available. The final rule simply requires that states certify for their second tranche payment and file all required reports before receiving their second tranche payment, with no 30 day wait period required.

B. Payments to Nonentitlement Units of Local Government (NEUs) and Units of Local Government (UGLGs) Within Non-UGLG Counties

The interim final rule established requirements related to distributions of SLFRF funds by states and territories to NEUs and UGLGs within non-UGLG counties. Specifically, the interim final rule provided that the total distribution to an NEU cannot exceed 75 percent of the most recent budget for the NEU (the 75 percent budget cap); a requirement set forth in section 603(b)(2)(C)(iii) of the Social Security Act. The interim final rule **SUPPLEMENTARY INFORMATION** defined the NEU's budget for purposes of calculating the 75 percent budget cap as the NEU's ''most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020.'' The interim final rule further provided that states and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap. Further, the interim final rule prohibited states and territories from placing additional conditions or requirements on distributions to NEUs beyond those required by the statute, the interim final rule, or Treasury's guidance and from offsetting any debt owed by such NEUs against such distributions.

Commenters predominantly focused on the definition of an NEU's budget for purposes of calculating the 75 percent budget cap, NEU allocations and eligibility, and the prohibition on states and territories imposing additional conditions or requirements in the NEU distribution process.

Definition of NEU Budget

Public Comment: Commenters suggested that Treasury provide greater clarification on the definition of an NEU's ''most recent budget'' for purposes of the 75 percent budget cap calculation. Treasury provided updated guidance on its interpretation of the 75 percent budget cap on June 30, 2021, and a commenter suggested that Treasury incorporate such updated interpretation into the **SUPPLEMENTARY INFORMATION** of the final rule.

Treasury Response: Consistent with the Update on Interpretation for the 75 Percent Budget Cap Calculation published on June 30, 2021,[372] the **SUPPLEMENTARY INFORMATION** of the final rule defines an NEU's budget for purposes of calculating the 75 percent budget cap as its total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. The guidance also gives states and territories flexibility to provide further guidance to their NEUs to operationalize the 75 percent budget cap. Given the variance in local financial accounting, this updated definition will better facilitate states' and territories' distribution of SLFRF funds to NEUs.

Allocations and Eligibility

Public Comment: Many commenters provided feedback on specific allocation calculations and eligibility of local governments for NEU funding. Commenters addressed how a locality was classified as an NEU or metropolitan city, deviations between Treasury's allocation calculations and earlier estimates from other sources, treatment of unincorporated areas, sources for population data, and Treasury's allocation of NEU funding to states and territories based on the population of a state and territory outside of its metropolitan cities. Two commenters proposed that Treasury provide an appeal process for localities that were not identified on the List of Local Governments used by states and territories as part of the process in which a state or territory determines the eligibility of an NEU in accordance with Treasury guidance, or for Minor Civil Divisions (MCDs) that were denied funding as part of a facts-and-circumstances test undertaken by a weak-MCD state.

Treasury Response: Neither the interim final rule nor the final rule addresses eligibility or allocations issues, and comments on these topics are outside the scope of this rulemaking. These questions are addressed in other Treasury guidance, including the Guidance on Distribution of Funds to Non-entitlement Units of Local Government and Non-entitlement Unit of Local Government Definitional and Data Methodology guidance documents available on Treasury's website.[373] Because Treasury interpreted the definition of an NEU[374] in accordance with the statute and established an NEU distribution process in May 2021, the final rule does not incorporate an appeals process regarding the definitions or the facts-and-circumstances test used for eligibility determinations.

Prohibition on Additional Conditions or Requirements in the NEU Distribution Process

Public Comment: One commenter expressed support for Treasury's prohibition on states and territories

[372] Treasury's Update on Interpretation for the 75 Percent Budget Cap Calculation can be found at: *https://home.treasury.gov/system/files/136/NEU-Update-75-Percent-Budget-Cap.pdf.*

[373] The Guidance on Distribution of Funds to Nonentitlement Units of Local Government can be found at this link: *https://home.treasury.gov/system/files/136/NEU_Guidance.pdf.* The Nonentitlement Unit of Local Government Definitional and Data Methodology can be found at this link: *https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.*

[374] Treasury has interpreted NEU to generally include both incorporated places and MCDs with active functioning governments, subject to the state determining, in the case of weak-MCD States, that a weak MCD has the legal and operational capacity to accept SLFRF funds and provides a broad range of services that would constitute eligible uses under ARPA. More details can be found in the Nonentitlement Unit of Local Government Definitional and Data Methodology, available at *https://home.treasury.gov/system/files/136/NEU_Methodology.pdf.*

placing additional conditions or requirements on distributions to NEUs. This prohibition restricts states and territories from imposing limitations on NEUs' use of SLFRF funds based on an NEU's proposed spending plan or other policies, offsetting any debt owed by an NEU against the NEU's distribution, or providing funding on a reimbursement model. In particular, the commenter noted that a reimbursement model would lead to inequities in accessing SLFRF funds.

Treasury Response: The final rule maintains and finalizes the prohibition on states and territories placing additional conditions or requirements on distributions to NEUs as well as to any UGLGs within counties that are non-UGLGs. Such conditions or requirements may contravene the statutory requirement that states and territories make distributions based on population and within the statutorily defined timeframe.

Other Provisions

Treasury did not receive substantive comments on the requirement that states and territories permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the 75 percent budget cap, or Treasury's interpretation of the 75 percent budget cap applying only to a consolidated government's NEU allocation under section 603(b)(2) but not to a consolidated government's county allocation under section 603(b)(3). Further, Treasury did not receive substantive comments on the interim final rule's allowance that states and territories be able to use SLFRF funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government. As such, the final rule maintains these provisions as written in the interim final rule without modification.

Treasury received some comments that are not addressed because they are beyond the scope of the NEU provision of the interim final rule or not authorized by the statute, including comments related to state accounting practices, re-allocations of NEU allocations that exceed the 75 percent budget cap, and concerns around eligible uses under SLFRF that small local governments may find particularly salient.

C. Timeline for Use of SLFRF Funds

The interim final rule provided that ''[a] recipient may only use funds to cover costs incurred during the period beginning March 3, 2021 and ending December 31, 2024.'' The interim final rule also provides that the period of performance will run until December 31, 2026, which will provide recipients an additional two years during which they may expend funds for costs incurred (*i.e.,* obligated).

As explained in more detail below, in the final rule Treasury is maintaining these time periods. Treasury will retain March 3, 2021 as the first date when costs may be incurred, to provide for forward-looking or prospective use of funds and to align with the start date of the ''covered period'' as such term is used in section 602(c)(2)(A). The deadline for costs to be incurred—which the final rule clarifies means obligated—December 31, 2024, is specified in the ARPA statute, and Treasury will retain December 31, 2026 as the end of the period of performance to provide a reasonable amount of time for recipients to liquidate obligations incurred by the statutory deadline.

Public Comments. Some commenters expressed concerns about costs incurred before March 3, 2021 not being covered and recommended the ''start date'' be changed to January 2020 to coincide with the declaration of the public health emergency. These commenters argued that recipient governments began incurring costs to respond to COVID–19 and its economic impacts in January 2020 and that prior federal fiscal relief, such as relief provided in the Coronavirus Aid, Relief, and Economic Security Act, did not fully compensate recipient governments for these costs. These commenters recommended that costs incurred before March 3, 2021 that otherwise fit within eligible use categories for SLFRF should be permissible uses of funds.

Some commenters asked Treasury to clarify whether local governments are subject to the same covered period as states and territories beginning March 3, 2021. Commenters noted that section 603(g) of the Social Security Act does not contain the same definition of ''covered period'' as section 602(g)(1) of the Social Security Act, which references a statutory provision that only applies to states and territories.

Many commenters requested that the deadline for costs to be incurred and the period of performance be extended due to the longer timeline for completing water and sewer projects. One commenter requested that recipients be able to split projects into different phases so that funds could be expended on larger, longer term projects (*e.g.,* by obligating funds on one portion of the project by the statutory deadline). One commenter recommended that the period of performance be extended for at least two additional years beyond the expenditure deadline set forth in the interim final rule, *i.e.,* until December 31, 2028. One commenter wrote that the final rule should allow for extended projects (*e.g.,* over a time horizon of more than ten years) for recipients working to develop long-term water supplies to prepare for extreme drought.

Treasury Response. In the final rule, Treasury is maintaining March 3, 2021 as the date when recipients may begin to incur costs using SLFRF funds. As described in the interim final rule, use of SLFRF funds is forward looking and the eligible use categories provided by statute are all prospective in nature. While recipients may identify and respond to negative economic impacts that occurred during 2020, the costs incurred to respond to these impacts remain prospective. Further, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be a relevant reference point for this purpose that provides some flexibility for recipients that began incurring costs in the anticipation of enactment of the ARPA or in advance of the issuance of the interim final rule and receipt of payment.

Finally, establishing an earlier start date would permit governments to use funds received in 2021 to satisfy obligations incurred in 2020. This use raises a substantial risk of SLFRF funds being used to supplant other recipient funds previously used to pay for such 2020 obligations, freeing funds for recipients to use for any purpose rather than eligible uses of SLFRF funds under the ARPA. Permitting such usage would undermine the provisions setting forth permissible and impermissible uses in the statute. Therefore, a reading of the statute permitting use of funds prior to March 3, 2021 would be inconsistent with the statutory structure.

In the final rule, Treasury is also maintaining the deadlines by which funds must be obligated (*i.e.,* December 31, 2024) and by which such obligations must be liquidated (*i.e.,* December 31, 2026). The December 31, 2024 deadline by which eligible costs must be incurred is established by statute. Treasury is finalizing its interpretation of ''incurred'' to be equivalent to the definition of ''obligation,'' based on the definition used for purposes of the Uniform Guidance. Treasury is also maintaining the period of performance, which will run through December 31, 2026, and provides the deadline by which recipients must expend obligated funds. Most recipients received SLFRF funds in the spring and summer of 2021,

meaning that they have over three years to obligate and over five years to expend funds. This provides a sufficient amount of time for recipients to plan and execute projects.

D. Transfers of Funds

Under section 602(c)(3) of the Social Security Act, a state, territory, or Tribal government may transfer SLFRF funds to a ''private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of state or local government.'' Similarly, section 603(c)(3) authorizes a local government to transfer SLFRF funds to the same entities (other than Tribal organizations). Separately, section 603(c)(4) authorizes a local government to transfer SLFRF funds to the state in which it is located.

Entities Eligible for a Transfer Under Sections 602(c)(3) and 603(c)(3)

Regarding transfers permitted under sections 602(c)(3) and 603(c)(3) of the Act, the interim final rule Supplementary Information clarified that the lists of transferees in these sections are not exclusive and that state, local, territorial, and Tribal governments may transfer funds to other constituent units of government or private entities beyond those specified in the statute.

Public Comment: Several commenters supported Treasury's interpretation of eligible transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive. However, many commenters asked for greater clarity as to whether specific entities not listed in Treasury's examples of eligible subrecipients, such as nonprofits and Tribal governments, were eligible transferees. One commenter also asked whether a recipient may transfer SLFRF funds to a higher level of government, such as a locality to the county in which it is located.

Treasury Response: The final rule clarifies that, in addition to the entities enumerated in sections 602(c)(3) and 603(c)(3), recipients may transfer SLFRF funds to any entity to carry out as a subrecipient an eligible use of funds by the transferor, as long as they comply with the Award Terms and Conditions and other applicable requirements, including the Uniform Guidance at 2 CFR 200.331–200.333. Eligible subrecipients include, but are not limited to, other units of government (including Tribal governments), nonprofits and other civil society organizations, and private entities. Further, the final rule clarifies that transfers may be made to both constituent or non-constituent units of government. For example, county A may transfer SLFRF funds to county B as long as county B abides by the use restrictions applicable to county A and the transfer would constitute an eligible use of the funds by county A. County A must receive a benefit proportionate to the amount transferred.

As detailed in the interim final rule Supplementary Information, once transfers are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law, regulations, and program guidance. Further, the transferor remains responsible for monitoring and overseeing the subrecipient's use of SLFRF funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the Award Terms and Conditions. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the SLFRF for the duration of the award.

Pooling Funds

Public Comment: Several commenters asked for clarification about whether they may pool SLFRF funds for a project with other recipients, including when doing so involves a transfer to another entity, such as a regional organization or government that undertakes projects on behalf of a number of local governments. Commenters also asked for clarification on the oversight and reporting obligations that would result from such transfers.

Treasury Response: Consistent with guidance issued following the interim final rule,[375] the final rule clarifies that recipients may pool SLFRF funds for projects, provided that the project is itself an eligible use of SLFRF funds for each recipient that is contributing to the pool of funds and that recipients are able to track the use of funds in line with the reporting and compliance requirements of the SLFRF. In general, when pooling funds for regional projects, recipients may expend funds directly on the project or transfer funds to another government or other entity that is undertaking the project on behalf of multiple recipients. To the extent recipients undertake regional projects via transfer to another organization or government, recipients would need to comply with the rules on transfers specified in the final rule

SUPPLEMENTARY INFORMATION. A recipient may transfer funds to a government outside its boundaries (*e.g.,* county transfers to a neighboring county), provided that the transferor can document that the transfer constitutes an eligible expense of the transferor government and that its jurisdiction receives a benefit proportionate to the amount transferred.

Blending and Braiding of Funds

Treasury is clarifying in the final rule that, consistent with further guidance issued by Treasury following the interim final rule,[376] recipients may fund a project with both SLFRF funds and other sources of funding, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies. The recipient must comply with applicable reporting requirements for all sources of funds supporting the SLFRF projects and with any requirements and restrictions on the use of funds from the supplemental funding sources and the SLFRF program. Specifically,

- All funds provided under the SLFRF program must be used for projects, investments, or services that are eligible under the SLFRF program. SLFRF funds may not be used to fund an activity that is not, in its entirety, an eligible use under the SLFRF program. For example:
  - SLFRF funds may be used in conjunction with other sources of funds to make an investment in water infrastructure that is eligible under section 602 or 603 of the Social Security Act and the final rule.
  - SLFRF funds could *not* be used to fund the entirety of a water infrastructure project that was partially, although not entirely, an eligible use under Treasury's final rule. However, the recipient could use SLFRF funds only for a smaller component project that does constitute an eligible use, while using other funds for the remaining portions of the larger planned water infrastructure project that do not constitute an eligible use. In this case, the ''project'' for SLFRF purposes under this program would be only the eligible use component of the larger project.
- In addition, because SLFRF funds must be obligated by December 31, 2024, and recipients must expend all funds under the award no later than December 31, 2026, recipients must be able to, at a minimum, determine and report to Treasury on the amount of SLFRF funds obligated and expended and when such funds were obligated and expended.

[375] Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[376] *See FAQ 4.10. Id.*

Scope of a 603(c)(4) Transfer

Unlike in the case of a transfer under sections 602(c)(3) or 603(c)(3), the interim final rule **SUPPLEMENTARY INFORMATION** specified that transfers from a local government to the state under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee state.

Public Comment: Two commenters suggested that Treasury expand section 603(c)(4) beyond transfers from localities to the state to include transfers from counties to their constituent local governments, which would incentivize counties to augment funds to address the needs of local governments. These commenters noted that counties are disincentivized to make transfers under section 603(c)(3), as is currently allowed, as such transfers would require that counties provide oversight and monitoring over its subrecipients.

Treasury Response: Section 603(c)(4), by its terms, applies only to transfers from local governments to states. Accordingly, the final rule must maintain the interim final rule's limitation of section 603(c)(4) transfers as applicable only to transfers from local governments to states. Expansions of section 603(c)(4) transfer authority beyond transfers from local governments to states were not explicitly authorized by Congress. As such, transfers under section 603(c)(4) may only be made by local governments to the state in which they are located.

Congress enumerated two separate transfer provisions for local governments—section 603(c)(3) and section 603(c)(4)—that use different language and were intended to operate differently. Section 603(c)(4) contains prefatory language (''Notwithstanding paragraph (1)''—a reference to the eligible SLFRF uses) that section 603(c)(3) does not. In other words, section 603(c)(4) transfers are not required to constitute an eligible use of the funds from the perspective of the transferor local government, but section 603(c)(3) transfers are required to constitute an eligible use. A transfer to accomplish an eligible use fits within the recipient-subrecipient framework.

Further, treating section 603(c)(3) transfers as leading to a cancellation of the award for the transferor local government would result in scenarios that are inconsistent with the statutory language. An award cancellation pursuant to a section 603(c)(3) transfer would result in either (1) non-governmental entities becoming award recipients under the program, which would contravene the purpose of SLFRF or (2) transfers to governmental and non-governmental entities being treated in a distinct and inconsistent manner. That is, section 603(c)(3) transfers to governmental entities would lead to award cancellation but section 603(c)(3) transfers to non-governmental entities would lead to a recipient-subrecipient relationship. Therefore, in the final rule, Treasury maintains its distinct treatment of a section 603(c)(3) transfer and section 603(c)(4) transfer.

The final rule clarifies that a transfer under section 603(c)(4) will result in a modification, termination, or cancellation of the award on the part of the transferor local government and a modification of the award to the transferee state or territory. As detailed in the **SUPPLEMENTARY INFORMATION** to the interim final rule, the transferor must provide notice of the transfer to Treasury in a format specified by Treasury. Until the local government provides such notice and Treasury provides confirmation of its acceptance of the notice, the local government will remain responsible for ensuring that the SLFRF award is being used in accordance with the Award Terms and Conditions, section 602 or 603 of the Social Security Act, the final rule, and program guidance including reporting on such uses of the award funds to Treasury.

A state that receives a transfer from a local government under section 603(c)(4) will be bound, by statute, by all of the use restrictions set forth in section 602(c) with respect to the use of those SLFRF funds, including the prohibitions on use of such SLFRF funds to offset certain reductions in taxes or to make deposits into pension funds. The state will be responsible as the prime recipient for the use and reporting on any funds transferred under section 603(c)(4) by the local government. Such transferred funds will be subject to the Award Terms and Conditions previously accepted by the state in connection with its SLFRF award.

Subrecipient Transfers

Public Comment: Commenters sought clarification as to how funds may be transferred from a recipient to another entity. For instance, one commenter requested that recipients be able to advance funds to subrecipients as opposed to reimbursing subrecipients for expenses incurred.

Treasury Response: Treasury did not specify in the interim final rule whether recipients may advance funds to subrecipients. This omission was not intended to prevent recipients from advancing funds to subrecipients, consistent with the various methods permitted under the Uniform Guidance. Given the broad flexibility that recipients have in selecting eligible uses and the broad variety of potential subrecipients, Treasury believes that specifying a single method of advancement or reimbursement would add unnecessary administrative difficulty to program administration. Recipients may determine the optimal payment structure for the transfer of funds (*e.g.,* advance payments, reimbursement basis, etc.) from recipients to subrecipients. Ultimately, recipients must comply with the eligible use requirements and any other applicable laws or requirements and are responsible for the actions of their subrecipients.

E. Administrative Expenses

The interim final rule permitted, under the heading ''[e]xpenses to improve efficacy of public health or economic relief programs,'' use of funds for ''[a]dministrative costs associated with the recipient's COVID–19 public health emergency assistance programs, including services responding to the COVID–19 public health emergency or its negative economic impacts, that are not federally funded.''

Following release of the interim final rule, Treasury issued Compliance and Reporting Guidance that provided that ''recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements. Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are [sic] allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.'' [377] Several commenters

[377] U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-*

Continued

requested clarity on which administrative expenses are permissible uses of funds and how recipients should structure administrative costs.

In the final rule, Treasury is clarifying that direct and indirect administrative expenses are permissible uses of SLFRF funds and are a separate eligible use category from ''[e]xpenses to improve efficacy of public health or economic relief programs,'' which refers to efforts to improve the effectiveness of public health and economic programs through use of data, evidence, and targeted consumer outreach. For details on permissible direct and indirect administrative costs, recipients should refer to Treasury's Compliance and Reporting Guidance.[378] Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs.

F. Treatment of Loans

The interim final rule allowed recipients to use SLFRF funds to make loans for uses that are otherwise eligible (for example, for small business assistance). Subsequent guidance clarified how recipients must track and dispose of program income from loans, consistent with the statutory requirements for the timing of SLFRF expenditures.

SLFRF funds must be used to cover ''costs incurred'' by the recipient between March 3, 2021 and December 31, 2024. The interim final rule provided that SLFRF funds must be obligated by December 31, 2024 and expended by December 31, 2026. In using SLFRF funds to make loans, recipients must be able to determine the amount of funds used to make a loan and must comply with restrictions on the timing of the use of funds and with restrictions in the Uniform Guidance.

When SLFRF funds are used as the principal for loans, there is an expectation that a significant share of the loaned funds will be repaid. Thus, recipients may not simply consider the full amount of loaned funds to be permanently expended and must appropriately account for the return of loaned funds.

For loans that mature or are forgiven on or before December 31, 2026, the recipient must account for the use of funds on a cash flow basis, consistent with Treasury's guidance regarding loans made by recipients using payments from the Coronavirus Relief Fund.[379] Recipients may use SLFRF funds to fund the principal of the loan and in that case must track repayment of principal and interest (*i.e.,* ''program income,'' as defined under 2 CFR 200). When the loan is made, recipients must report the principal of the loan as an expense.

Repayment of principal may be re-used only for eligible uses and is subject to restrictions on the timing of the use of funds. Interest payments received prior to the end of the period of performance will be considered an addition to the total award and may be used for any purpose that is an eligible use of funds under the statute and final rule. Recipients are not subject to restrictions under 2 CFR 200.307(e)(1) with respect to such payments.

For loans with maturities longer than December 31, 2026, the recipient must estimate the cost to the recipient of extending the loan over the life of the loan. In other words, at origination, the recipient must measure the projected cost of the loan and may use SLFRF funds for the projected cost of the loan. Recipients have two options for estimating this amount: They may estimate the subsidy cost (*i.e.,* net present value of estimated cash flows) or the discounted cash flow under current expected credit losses (*i.e.,* CECL method). See further guidance issued by Treasury for further explanation.[380]

Public Comment: Many commenters asked for further clarification on the treatment of loans and the calculation of ''costs incurred.'' Some commenters requested that grants made for eligible activities prior to December 31, 2024 to a revolving loan fund, an economic development corporation, a land bank, or a similar facility should be considered obligated and expended at the time of the grant. This would allow funds to be expended by the grantee beyond the covered period and for funds returned to the grantee to be re-invested in further uses outside of the covered period.

Treasury Response: The final rule maintains the treatment of loans from the interim final rule and subsequent guidance, as discussed above. This approach is consistent with the statutory requirement that funds be used for costs incurred for eligible purposes by December 31, 2024 and is consistent with standard accounting practices and the Uniform Guidance.

G. Use of Funds for Match or Cost-Share Requirements

As a general matter and as referenced in the **SUPPLEMENTARY INFORMATION** to the interim final rule, funds provided under one federal program may not be used by a recipient to meet the non-federal match or cost-share requirements of another federal program.

However, Treasury has since determined that, consistent with this general principle and the requirements of the Uniform Guidance at 2 CFR 200.306(b)(5), the funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, generally may be used to meet the non-federal cost-share or matching requirements of other federal programs. Federal funds that constitute revenue sharing to state and local governments may generally be used to meet non-federal match requirements.[381] The broad eligible uses of the SLFRF funds available under sections 602(c)(1)(C) and 603(c)(1)(C) of the Social Security Act, combined with the purpose of these provisions (which is to provide general fiscal assistance to governments facing revenue losses due to the public health emergency), demonstrate that these funds are revenue sharing. They thus should generally be permitted to be used to meet the non-federal match and cost-share requirements of other federal programs. As such, the SLFRF funds available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, may be used to meet the non-federal match requirements of the Drinking Water State Revolving Fund and Clean Water State Revolving Fund programs administered by the EPA, for example.

Pursuant to 2 CFR 200.306(b) of the Uniform Guidance, if funds are legally available to meet the match or cost-share requirements of an agency's federal program, such awarding agency is required to accept such funds for the purpose of that program's match or cost-share requirements except in the circumstances enumerated in that section. The Office of Management and Budget has authority under 2 CFR

recovery-funds/recipient-compliance-and-reporting-responsibilities.

[378] *Id.*

[379] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 FR at 4192.

[380] *See FAQ 4.11.* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

[381] See U.S. Government Accountability Office, *Principles of Federal Appropriations Law, Third Edition, Volume II,* p. 10–99, GAO–06–382SP (February 2006), *https://www.gao.gov/assets/gao-06-382sp.pdf.*

200.102 of the Uniform Guidance to issue waivers of this requirement on request of the relevant awarding agency. Analogous requirements and waiver authorities may be present in other regulations. If a recipient seeks to use SLFRF funds to satisfy match or cost-share requirements for a federal grant program, it should first confirm with the relevant awarding agency that no waiver has been granted for that program, that no other circumstances enumerated under 2 CFR 200.306(b) would limit the use of SLFRF funds to meet the match or cost-share requirement, and that there is no other statutory or regulatory impediment to using the SLFRF funds for the match or cost-share requirement. Note that SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver as requested by the Centers for Medicare & Medicaid Services pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.

SLFRF funds beyond those that are available under sections 602(c)(1)(C) or 603(c)(1)(C) of the Social Security Act for the provision of government services may not be used to meet the non-federal match or cost-share requirements of other federal programs other than as specifically provided for by statute. For example, as discussed in other sections of this final rule, section 40909 of the Infrastructure Investment and Jobs Act provides that SLFRF funds may be used to meet the non-federal match requirements of any authorized Bureau of Reclamation project, and section 60102 of the Infrastructure Investment and Jobs Act provides that the SLFRF may be used to meet the non-federal match requirements of the broadband infrastructure program authorized under that section (see sections Water and Sewer Infrastructure and Broadband Infrastructure).

H. Reporting

The interim final rule established Treasury's authority to collect information from recipients through requested reports and any additional requests for information. The interim final rule also provided Treasury flexibility to extend or accelerate reporting deadlines and to modify requested content for the Interim Report, Project and Expenditure reports, and Recovery Plan Performance reports.

The **SUPPLEMENTARY INFORMATION** of the interim final rule provided initial guidance on the reporting requirements for the SLFRF funds. States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments were required to submit one interim report and quarterly Project and Expenditure reports thereafter. Non-entitlement units of local government were not required to submit an interim report. States, territories, and metropolitan cities and counties with a population greater than 250,000 residents were also required to submit an annual Recovery Plan Performance report to Treasury. The Supplementary Information of the interim final rule provided guidance on the deadlines and content required for each type of report.

Public Comment: Treasury received many comments on the content and specific data elements required of program reporting. Some commenters expressed enthusiasm for including particular details in reporting to promote transparency. Other commenters requested that Treasury streamline reporting requirements to avoid imposing undue administrative burdens and compliance costs. Many commenters requested further clarification on or amendments to particular elements of reporting content. Some commenters requested that reports and specific reporting elements be public, including a request for a public website with a number of programmatic data metrics about the use of SLFRF funds. Some commenters sought clarification and guidance for using the reporting portal, which allows recipients to upload the required information, or requested user modifications to the portal. Finally, some commenters requested that Treasury provide example materials and reporting metrics to aid recipient understanding.

Treasury Response: Since the publication of the interim final rule, Treasury issued supplementary reporting guidance in the Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting (User Guide).[382] Treasury has addressed many of these comments in the Compliance and Reporting Guidance and User Guide and will continue to issue updated guidance prior to each reporting period clarifying any modifications to requested report content. Treasury notes that the interim final rule did not address the specific content and data elements required in reporting, the reporting portal or submission process, and the specific form of reporting (*e.g.,* example templates, machine readability); comments on these topics are outside the scope of the final rule and, as noted, are addressed instead in Compliance and Reporting Guidance.

Reporting Deadlines

Public Comment: Treasury received comments requesting various changes to reporting deadlines to ease compliance burdens. For example, Treasury received several comments requesting that Treasury delay early reporting deadlines for various reasons, including to align with the timeline for issuing a final rule and to allow for more time for recipients to determine SLFRF allocations. Commenters also requested changes to the immediacy of reporting, for example requesting that Treasury allow expenses to be reported with a lag instead of the quarter in which they were accrued or that reports be due 90 days after period close instead of 30 days after the close of a reporting period. Some commenters requested changes to the reporting frequency, for example to report biannually rather than quarterly.

Treasury Response: Treasury has clarified reporting deadlines in the Compliance and Reporting guidance.[383] Treasury is retaining the reporting deadline of 30 days after the close of the reporting period to ensure timely accounting of the use of SLFRF funds; this timeline also aligns with practices in many other federal programs. The final rule maintains Treasury's discretion to extend or delay reporting deadlines.

Administrative Costs for Reporting and Compliance

Public Comment: Many commenters sought clarification about whether various administrative costs related to reporting and compliance were eligible uses of funds and asked for clarification on the limits of such use.

Treasury Response: Treasury notes that administrative costs are generally allowable uses of SLFRF funds, including for reporting. For additional information on administrative expenses, please see section Administrative Expenses under Program Administration Provisions.

Uniform Guidance

Public Comment: The **SUPPLEMENTARY INFORMATION** of the interim final rule clarified that SLFRF funds were generally subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit

[382] U.S. Department of the Treasury, Recipient Compliance and Reporting Responsibilities, as of November 5, 2021; *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities.*

[383] *Id.*

Requirements for Federal Awards (2 CFR part 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost. Treasury received many comments requesting clarification about or modifications to the applicability of the Uniform Guidance on various issues.

For example, one commenter requested that Treasury remove requirements that expenditures of funds be made in conformance with the Uniform Guidance, particularly in case of expenditures made during period from March 3, 2021 to the release of the interim final rule, while other comments requested that Treasury raise the single-audit threshold from $750,000 to $5 million. Commenters sought clarification on items such as: The applicability of the Uniform Guidance for funds that are used for the provision of government services, the applicability of particular sections of the cost principles provided in subpart E of the Uniform Guidance, the applicability of the procurement provisions of the Uniform Guidance, and requirements for subrecipient reporting.

Treasury Response: Recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR part 200) from the date of award to the end of the period of performance on December 31, 2026 unless otherwise specified in this rule or program-specific guidance. Costs must follow the requirements in 2 CFR 200 Subpart E, Cost Principles, including procurement standards. Recipients that receive an aggregate amount of federal financial assistance in a given fiscal year that exceeds the Single Audit threshold are subject to the requirements in 2 CFR 200 Subpart F, Audit Requirements, unless otherwise specified in program-specific guidance.

SLFRF funds transferred to subrecipients are also subject to reporting and Uniform Guidance requirements. Additional information about the definition of subrecipients is available in the section Distinguishing Subrecipients versus Beneficiaries.

Recipients should refer to the Assistance Listing for details on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing is available on SAM.gov. Additional changes to compliance and reporting guidelines, including any clarifications on Uniform Guidance requirements, will be addressed in Compliance and Reporting Guidance and the User Guide.[384]

[384] *Id.*

I. Remediation and Recoupment

Sections 602(e) and 603(e) of the Social Security Act provide the Secretary with the power to recoup ''funds used in violation'' of the Social Security Act. The interim final rule implemented these provisions by establishing a process for recoupment. Treasury may identify funds used in violation of the Social Security Act based on information submitted by recipients, including as part of reporting requirements, as well as information from other sources.[385] If a potential violation is identified, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts. A recipient then has 60 calendar days following receipt of a recoupment notice to submit a request for reconsideration containing any information it believes supports its use of funds. Within 60 calendar days of receipt of the request for reconsideration, the interim final rule provided that a recipient will receive a final notice of the Secretary's decision to affirm, withdraw, or modify the recoupment notice. If the recipient did not submit a request for reconsideration, the initial notice of recoupment would be deemed a final notice. A recipient would then be required to repay any amounts subject to recoupment within 120 calendar days of either the initial recoupment notice, if the recipient does not request reconsideration, or the final recoupment notice, if the recipient does request reconsideration.

Public Comments

Treasury received several comments on the process for recoupment. For instance, some commenters, including many Tribal governments, requested additional time to file a request for reconsideration and submit repayment to ensure that small entities have the time necessary to carry out any logistical steps and consult with counsel. Treasury was also asked to align its recoupment process with that of the Office of the Inspector General and other departmental administrative processes to resolve findings, agency decisions, and related timelines. One commenter asked if the 120-calendar-day time limit for repayment was based on the initial notice, rather than a final decision issued by the Secretary. Several commenters expressed concern regarding the recoupment process, arguing that consideration of ''all relevant facts and circumstances'' provided Treasury with too much authority and created ambiguity. Other commenters urged Treasury to establish a robust enforcement and compliance program and process and advocated for the creation of a whistleblower mechanism or public complaint process to allow public and private entities to report suspected misuses of funds. Finally, some commenters requested clarification regarding the process after a violation is identified and becomes final. One commenter also asked to allow recipients to amend reports deemed to contain ineligible expenses and inform recipients how the agency intends to resolve instances where a use was later deemed unacceptable. Another commenter asked if recouped funds could be released back to the recipient.

Commenters also expressed concern about Treasury's authority to recoup funds used in violation of the tax offset provision. Some commenters requested additional clarity around when tax cuts would trigger Treasury's recoupment authority and the duration of Treasury's authority to seek recoupment of such funds.

Treasury Response

The final rule largely preserves the process established in the interim final rule but includes several adjustments to clarify certain elements.

Like the interim final rule, the final rule provides that, after an initial determination is made that a recipient has used SLFRF funds in violation of the law, a recipient may submit a request for reconsideration concerning any amounts identified in a notice provided by Treasury. If a recipient chooses to seek reconsideration of the initial notice, the recipient must submit a request for reconsideration as provided under the final rule. If a recipient does not request reconsideration, the initial notice that the recipient received will be deemed the final notice.[386] Treasury has clarified that a recipient must invoke and exhaust the procedures available under section 35.10 of the final rule prior to seeking judicial review of a recoupment decision. Consistent with Section 602(b)(6)(A)(ii)(III) of the Social Security Act, if a state or territory is required to repay funds pursuant to the Secretary's recoupment authority, the Secretary may reduce the amount payable to the state or territory in a second tranche payment by the amount that the state or territory would be required to repay as recoupment.

In the final rule, Treasury has clarified that, if it identifies a potential

[385] Treasury will also consider the tax offset provision on an annual basis.

[386] Funds subject to recoupment cannot later be returned.

violation,[387] it may request additional information from a recipient before initiating the recoupment process and, where necessary, provide written notice to the recipient along with an explanation of such amounts potentially subject to recoupment. Furthermore, Treasury has also made clear that it retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

This process is intended to provide the recipient with an adequate opportunity to present additional information regarding its uses of funds and provides flexibility for recipients to determine the information relevant to the particular facts and circumstances. It is also flexible enough to align with other adjudication procedures in other ARPA recovery programs administered by the Office of Recovery Programs at Treasury. As discussed above, the initial notice will provide recipients with an explanation of the identified potential violation in order to provide recipients with a meaningful opportunity to respond. Such initial notice will generally include information regarding the specific use of SLFRF funds and the source of such information.[388] This process also will allow the Secretary to take into consideration the information provided by recipients, along with other relevant information, to ensure SLFRF funds are used in a manner consistent with the Social Security Act.

Finally, Treasury expects to work with recipients to support the use of SLFRF funds consistent with the law. For example, Treasury may request additional information from a recipient before initiating the recoupment process. In addition, Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.[389] These efforts may include working with recipients to identify and substitute permissible uses of SLFRF funds or amending uses of SLFRF funds to comply with applicable restrictions.

In response to comments regarding the amount of time provided to respond to an initial notice, the final rule clarifies that Treasury retains the ability to expedite or extend timelines in any adjudication or pre-adjudication process pursuant to section 35.4(b) of the final rule, although the general timelines set forth in the interim final rule are maintained in the final rule.

V. Regulatory Analyses

Executive Orders 12866 and 13563

Regulatory Impact Assessment

This final rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 for the purposes of Executive Orders 12866 and 13563 because it is likely to have an annual effect on the economy of $100 million or more.

As explained below, this regulation meets a substantial need: ensuring that recipients—states, territories, Tribal governments, and local governments—of SLFRF funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' intent to provide necessary relief to recipient governments adversely impacted by the COVID–19 public health emergency. Furthermore, as required by Executive Orders 12866 and 13563, Treasury has weighed the costs and benefits of this final rule and varying alternatives and has reasonably determined that the benefits of the final rule to recipients and their communities far outweigh any costs.

The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

Executive Orders 12866 and 13563

Under Executive Order 12866, OMB must determine whether this regulatory action is ''significant,'' and therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may, among other things, have an annual effect on the economy of $100 million or more. This rule is likely to have an annual effect on the economy of $100 million or more, and therefore, it is subject to review by OMB under section 3(f) of Executive Order 12866.

Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices. Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this final rule is consistent with the principles set forth in Executive Orders 12866 and 13563. This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs. Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this final rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits.

Need for Regulatory Action

This final rule implements the $350 billion SLFRF program of the ARPA, which Congress passed to help states, territories, Tribal governments, and localities respond to the ongoing COVID–19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this final rule is needed to ensure that recipients of SLFRF funds fully

[388] Treasury may address potential violations based on information submitted from recipients, either through quarterly reports or self-reported information, and from other sources of information as Treasury deems necessary and appropriate (*e.g.,* press, information submitted from the public).

[389] Treasury intends to work with recipients to support the use of SLFRF funds consistent with the law.

understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief. This final rule governs the use of $350 billion in grant funds from the federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing its costs. It has done so by: aiming to target relief in key areas according to the congressional mandate; offering clarity to states, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits

Relative to a pre-statutory baseline, the SLFRF funds provide a combined $350 billion to state, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID–19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[390] Absent such fiscal relief, fiscal austerity among state, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007–2009 recession.[391]

This final rule provides benefits across several areas by implementing the four eligible use categories, as defined in statute: strengthening the response to the COVID–19 public health emergency and its negative economic impacts; replacing lost revenue to ease fiscal pressure on state, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government services; providing premium pay to essential workers; and making necessary investments in water, sewer, and broadband infrastructure.

These benefits are achieved in the final rule through a broadly flexible approach that sets clear guidelines on eligible uses of SLFRF funds and provides state, local, and Tribal government officials discretion within those eligible uses to direct SLFRF funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the final rule includes several provisions that implement statutory requirements and will help support use of SLFRF funds to achieve the intended benefits. Preserving flexibility for recipients not only serves an important public policy goal by allowing them to meet particularized and diverse needs of their local communities but also enhances the economic benefits of the final rule by allowing recipients to choose eligible uses of funds that provide the highest utility in their jurisdictions.

In implementing the ARPA, Treasury has also prioritized supporting underserved communities that have been disproportionately impacted by the pandemic. The SLFRF program as implemented by the final rule provides even greater flexibility to recipients for uses of funds in underserved communities, recognizing that pre-existing health and economic disparities in these communities amplified the impact of the pandemic there. In general, investments in improving health outcomes and economic opportunities provide high economic returns, so this approach is likely to achieve substantial near-term economic and public health benefits, in addition to the longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure.

The remainder of this section clarifies how Treasury's approach to key provisions in the final rule will contribute to greater realization of benefits from the program.

Public Health and Negative Economic Impacts

The eligible use category for responding to the public health and negative economic impacts of the pandemic covers a wide range of eligible uses of funds. Treasury addresses several key uses of funds in this analysis, as well as ways that Treasury has structured this eligible use to minimize recipient administrative burden while also maintaining targeting of the funding to entities that experienced negative impacts from the pandemic.

Government Employment: In order to bolster the government's ability to effectively administer services, the final rule allows for a broader set of eligible uses to restore and support public sector employment relative to the interim final rule. In particular, eligible uses include hiring up to a pre-pandemic baseline that is adjusted for historic underinvestment in the public sector by allowing funds to be used to pay for payroll and covered benefits associated with the recipient increasing its number of employees up to 7.5 percent above its pre-pandemic baseline. Eligible uses also include providing additional funds for employees who experienced pay cuts or were furloughed, avoiding layoffs, providing worker retention incentives, and paying for ancillary administrative costs related to hiring.

Treasury believes this expanded approach, relative to the interim final rule, provides useful flexibility to recipients, which may increase a state or local government's ability to effectively deliver services to its residents. While the interim final rule already explicitly permitted using funds to restore recipients' workforces up to pre-pandemic levels, the final rule's inclusion of an upward adjustment factor recognizes that, as the population or economy of a jurisdiction grows over time, more workers are generally needed to effectively meet responsibilities. It also provides recipients greater room to employ funds toward building back the public sector workforce after years of chronic underinvestment since the Great Recession. Treasury arrived at the 7.5 percent adjustment factor through an analysis of data from the Bureau of Labor Statistics on state and local government employment and data from the Census Bureau on population to estimate the extent of underinvestment in the public sector since the onset of the Great Recession. While Treasury considered a range of methodologies and point estimates to set the adjustment factor, a 7.5 percent factor errs on the side of recipient flexibility. Treasury believes this adjustment enhances recipients' ability to identify and meet the particularized needs of their communities. Treasury also believes that the additional enumerated eligible uses for supporting the workforce provide recipients several means to help retain current workers, decreasing turnover costs.

Identifying Eligible Populations

Treasury has provided several methods for recipients to identify households, populations, and communities eligible for services that respond to the public health and negative economic impacts of the pandemic. In general, these methods seek to provide recipients options to identify eligible populations with minimal administrative burden, while also maintaining targeting of the funds

[390] *See, e.g.,* Gabriel Chodorow-Reich et al., *Does state Fiscal Relief During Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act,* 4 American Economic Journal 118–145 (2012) *http://dx.doi.org/10.1257/pol.4.3.118.*

[391] See, *e.g.,* Fitzpatrick, *supra* note 278.

to entities impacted by the pandemic. Recipients also retain flexibility to identify and serve other populations and entities that experienced pandemic impacts, ensuring that recipients can meet the particularized needs of their local communities.

Defining Low and Moderate Income: To streamline the provision of funds relating to negative economic impacts resulting from the pandemic, Treasury has created an eligibility standard making it easier for recipients to provide assistance to low- and moderate-income populations without needing to identify and document a specific negative economic impact. Populations falling under the definition of low income are presumed to have been disproportionately impacted by the pandemic, while those falling under the definition of moderate income are presumed to have been impacted by the pandemic. In addition, the final rule recognizes categorical eligibility for certain enumerated programs and populations if a recipient chooses to implement categorical eligibility when identifying impacted and disproportionately impacted populations. Treasury considered several options for eligibility standards that would reduce administrative burdens for recipients when determining who qualifies as low and moderate income.

One option involved defining a household as low income or moderate income based only on FPG thresholds and could use levels lower than those selected. This option involved setting uniform thresholds throughout the country.

A second option took a broader approach, defining a household as low income if it has (i) income at or below 185 percent of the FPG for the size of its household or (ii) income at or below 40 percent of the AMI for its county and size of household. The option defined a household as moderate income if it has (i) income at or below 300 percent of the FPG for the size of its household or (ii) income at or below 65 percent of the AMI for its county and size of household. The combination of an FPG floor with AMI allows for a regional adjustment in areas with substantially higher costs and incomes. Finally, Treasury also considered a range of FPG and AMI thresholds above and below these levels.

Treasury chose the second option. Treasury believes that the higher FPG floor will ease administrative burdens by making more households presumptively eligible for funds meant to address negative economic impacts in a targeted manner. With respect to the low-income cutoff, 185 percent of the FPG for a family of four is $49,025, which is approximately the wage earnings for a two-earner household where both earners receive the median wage in occupations, such as waiters and waitresses and hotel clerks, that were heavily impacted by COVID–19. As such, this cutoff is likely to include more workers in industries heavily impacted by COVID–19, who may be most likely to face disproportionate impacts of the pandemic, than a lower threshold.[392] With respect to the moderate-income cutoff, many households with incomes between 200 percent and 300 percent of the FPG struggle with a lack of economic security, suggesting that 300 percent of the FPG was an appropriate cutoff for moderate income.

Treasury also considered relatively higher thresholds for both an FPG and AMI approach; however, increasing income thresholds for presumed eligibility increases the likelihood that higher-income workers, who generally experienced fewer economic impacts from the pandemic, would become presumed eligible for responsive services. Providing services to households that did not experience a negative economic impact, or experienced a relatively minimal impact, would provide much less benefit than serving households that experienced more severe impacts, diluting the benefits of the SLFRF funds.

In all, Treasury anticipates that these selected thresholds, combined with the regional adjustment, will allow resources to be targeted toward individuals and households with the greatest need while also reducing administrative burdens on recipients.

Disproportionately Impacted Populations: In the interim final rule, Treasury enumerated a broader set of eligible uses for disproportionately impacted communities, in recognition of the pre-existing health, economic, and social disparities that contributed to disproportionate pandemic impacts in certain communities and that addressing root causes of those disparities constitutes responding to the public health and negative economic impacts of the pandemic. To identify these communities and reduce administrative burden, Treasury allowed recipients to presume that certain populations—those in QCTs and those being served by Tribal governments—were disproportionately impacted. In the final rule, to further decrease administrative burden and enhance recipient flexibility, Treasury is allowing recipients to also presume that low-income households were disproportionately impacted. Treasury anticipates that adding low-income households as a presumed eligible population will maintain targeting of funds to populations and communities most likely to have experienced severe pandemic impacts, while providing a more flexible approach for recipients.

Identifying Impacted Classes: In the final rule, Treasury reiterated its stance in the interim final rule allowing recipients to designate a class of households or other entities as impacted or disproportionately impacted and provide responsive services. After designating a class, recipients can serve a household or entity by simply identifying that the household or entity is a member of the class. Relative to restricting services to only presumed eligible populations identified by Treasury, this decision provides vital administrative flexibility for recipients that may identify particular impacted classes in the context of their jurisdiction. Treasury anticipates that SLFRF funds will be targeted to impacted or disproportionately impacted communities, as recipients must demonstrate that the designated class experienced negative economic impacts or meaningfully more severe negative economic impacts. This approach maintains the requirement that entities served have to have experienced a negative economic impact, while simultaneously minimizing any administrative costs associated with meeting this requirement.

Additional Enumerated Uses

The interim final rule enumerated eligible uses of SLFRF funds to serve both impacted and disproportionately impacted communities. For example, enumerated eligible uses to serve impacted communities included food assistance; rent, mortgage, or utility assistance; and counselling and legal aid to prevent eviction or homelessness. Examples of enumerated eligible uses to serve disproportionately impacted communities included remediation of lead paint or other lead hazards and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity. In the final rule, Treasury had the option to retain, expand, or reduce enumerated eligible uses, or shift use eligibility between disproportionately impacted and impacted communities. Many

[392] *See* U.S. Bureau of Labor Statistics, Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/current/oes_nat.htm* (last visited November 9, 2021).

public comments suggested potential expansions of uses, including shifting enumerated eligible uses for disproportionately impacted communities to serve a broader population of impacted communities. Taking these comments into account, Treasury generally took this approach, in anticipation that the benefits of the program will increase while recipient administrative costs in identifying and justifying non-enumerated uses of funds will decrease.

Specifically, Treasury added enumerated eligible uses for impacted populations including paid sick, medical, or family leave; health insurance subsidies; and services for the unbanked and underbanked, on the basis that impacts of the pandemic that were broadly experienced by many communities would be addressed by these uses. Treasury also shifted some eligible uses, formerly restricted only to disproportionately impacted communities, to impacted communities. These uses included community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, and services to promote healthy childhood environments like childcare and early learning. These uses were shifted on the basis that the associated impacts of the pandemic were experienced by a broader population, and responses are, accordingly, eligible to benefit a broader population.

Additionally, the final rule clarified that investments in parks and other public outdoor recreation spaces are enumerated eligible uses for disproportionately impacted communities. In including these uses, Treasury took into account evidence on the social determinants of health, or the ways that social context, like the neighborhood built environment, impacts health outcomes. By taking a more holistic approach to public health, the final rule allows recipients to respond more broadly to factors that contributed to the pandemic's health impacts and more fully mitigate those health impacts.

To balance administrative flexibility with a maintenance of focus on impacts of the pandemic, Treasury considered, but did not include, other proposed enumerated uses that did not respond to the impacts of the pandemic or responded to impacts that were not experienced generally across the country by many jurisdictions and populations. For example, Treasury did not include pollution remediation broadly, a proposed enumerated eligible use for disproportionately impacted communities, on the basis that associated projects would only respond to disproportionate impacts of the pandemic depending on the specific issue addressed. In sum, Treasury expanded enumerated eligible uses while retaining a focus on broadly experienced impacts of the pandemic. Treasury anticipates that this will give recipients further flexibility to presume eligibility and respond to pandemic impacts without increasing administrative burden.

Capital Expenditures: In the interim final rule, Treasury permitted funds to be used for a limited number of capital expenditures mostly related to the COVID–19 public health response. This decision granted recipients some discretion to use SLFRF funds to address COVID–19 prevention and mitigation through certain investments in equipment, real property, and facilities, which Treasury recognized as critical components of the public health response. In the final rule, Treasury considered maintaining the provisions in the interim final rule or expanding allowable capital expenditures to provide recipients greater flexibility to pursue other capital investments that are responsive to the public health emergency and its negative economic impacts. While expanding allowable capital expenditures may increase the risk that recipients will undertake large expenditures that do not sufficiently address intended harms, or address harms in a less cost-efficient manner than an alternative investment (*e.g.,* a program or service), expanding allowable capital expenditures would likely help fill critical gaps in recipients' response to the pandemic and provide equipment and facilities that generate benefits beyond SLFRF's period of performance. To preserve flexibility while mitigating risks, the final rule allows recipients to undertake an expanded set of capital expenditures while requiring additional written justifications for projects with an expected total cost at or over $1 million. Treasury believes this approach balances the implementation of appropriate risk-based compliance requirements and the provision of administrative convenience for smaller capital expenditures, while generally allowing recipients the flexibility to undertake a greater variety of responsive capital expenditures.

Revenue Loss

Revenue Loss Formula: In this final rule, Treasury's approach to revenue loss allows recipients to compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury has made several adjustments in the final rule to decrease administrative burden, reducing costs for recipients, while still accurately capturing reductions in revenue due to the pandemic.

Under the interim final rule, Treasury specified that recipients calculate revenue loss on a calendar year basis. In this final rule, Treasury is providing recipients the option to calculate revenue loss on a calendar year or fiscal year basis, which will allow recipients the administrative flexibility to minimize administrative burdens based on the data available to them.

Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Recipients will have the opportunity to calculate revenue loss at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis is intended to result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis, given that recipients may have experienced offsetting changes in revenues across sources. The final rule also provides for removing the impact of tax increasing or decreasing changes, which affect the amount of revenue collected but are not ''due to'' the pandemic, from the calculation of revenue loss due to the public health emergency. Both of these components of Treasury's approach provide a more accurate representation of the effect of the pandemic on overall revenues.

Revenue Loss Standard Allowance: In addition to largely preserving the formula to calculate revenue loss from the interim final rule, Treasury also added an alternative ''standard allowance'' option for the revenue loss calculation to this final rule. Treasury's decision to elect to allow a fixed amount of loss that can be used to fund ''government services'' allows recipients the flexibility to use minimal administrative capacity on the calculation if desired. The decision also benefits recipients by allowing them to avoid expending administrative

resources to determine how unique variations in revenue interact with the revenue loss formula.

Premium Pay

Per the ARPA statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay. While the final rule provides significant flexibility to implement the statutory requirement that premium pay respond to essential workers, it requires recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold or is awarded to an individual whose annual pay is already above that threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Alternatively, a recipient need not submit written justification to Treasury if the worker receiving premium pay is eligible for overtime under the FLSA. Treasury believes this alternative, which is an addition to the final rule, will give recipients more flexibility and will simplify application of the final rule as employers, public and private, are already legally required to determine whether an employee is eligible for overtime pay under the FLSA. Treasury believes the threshold and overtime eligibility provision in the final rule strike the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The final rule also requires that workers eligible for premium pay have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will help encourage use of financial resources for those who have endured the heightened risk of performing essential work.

Water and Sewer Infrastructure

In the interim final rule, Treasury aligned eligible uses of funds for water and sewer infrastructure to those projects eligible to receive financial assistance through the DWSRF and CWSRF administered by the EPA.

The benefits of this approach included giving recipients an existing list that would provide them clarity as well as flexibility in identifying eligible projects, particularly given the broad range of projects eligible under the CWSRF and DWSRF. The approach also ensured that projects would conform to vetted project types from a widely used program. Treasury received comments from recipients requesting additional project categories to be considered eligible, indicating a potential cost to maintaining alignment with the CWSRF and DWSRF.

For the final rule, Treasury has expanded eligibility to include several additional project types beyond those covered by the CWSRF and DWSRF.

Treasury believes that expanded eligibility will benefit recipients by allowing them additional flexibility to pursue beneficial projects, including project categories that support the provision of drinking water and the removal, management, and treatment of wastewater and stormwater: Additional stormwater management projects, private well infrastructure, additional projects that address lead in water, and certain dam and reservoir rehabilitation projects undertaken to address the provision of drinking water. A potential cost of this approach is that uses beyond the CSWRF and DWSRF may have less public guidance available to understand project eligibilities. However, Treasury anticipates that this eligibility expansion will provide a net benefit to recipients by allowing them to pursue projects relevant to their goals that were ineligible under the interim final rule.

The expansion to allow private well infrastructure may also affect the distributional impact of SLFRF. Private wells disproportionately serve rural Americans, including low-income households, and expanding eligibility to include this use may allow SLFRF funds to benefit such households. While distributional impacts are uncertain, Treasury believes that the potential for benefits to accrue to rural and low-income households makes it important to clarify that these types of projects are eligible.

Broadband Infrastructure

In the final rule, Treasury expands eligible areas for broadband investment by requiring that recipients invest in projects designed to provide service to households and businesses with an identified need for additional broadband investment, including increasing access to high-speed broadband, increasing the affordability of broadband services, and improving the reliability of broadband service.[393] Treasury considered multiple alternatives when selecting this standard. The threshold for the interim final rule allowed benefits to accrue in a more targeted manner to the approximately 9 percent of the country with access to speeds under the 25/3 Mbps threshold.[394] However, since SLFRF funds are distributed to tens of thousands of governments across the country with a variety of broadband needs, Treasury believes that allowing recipients greater flexibility to determine locations to serve in their jurisdictions—including considering affordability and competition barriers—will lead to greater long-term public benefit. Further, given that many federal broadband grant programs are focused solely on unserved and underserved areas, Treasury believes that the final rule's flexibility enables these funds to fill an important role in the overall federal broadband landscape.

In the final rule, Treasury also requires that broadband projects must meet a standard of reliably delivering at least 100 Mbps download speeds and upload speeds, or in cases where it is not practicable to do so, reliably delivering at least 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed while being scalable to 100 Mbps upload and download speeds. Treasury expects that this threshold will yield long-term benefits and allow networks to meet both pandemic-related and future needs. The Federal Communications Commission (FCC) estimates that currently a household with two to three remote learners using the internet simultaneously needs a connection supporting 100 Mbps download speeds.[395] While a lower threshold may have resulted in lower near-term costs to build, it would have potentially constrained future utility from the infrastructure by producing infrastructure that would more quickly—potentially in the near-term—become obsolete and no longer meet household needs, potentially requiring sooner replacement and generally decreasing the return on investment. As

[393] Further, the final rule encourages, but does not require, that recipients pursue broadband infrastructure projects in locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.

[394] Data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Federal Communications Commission, Fixed Broadband Deployment, *https://broadbandmap.fcc.gov/#/* (last visited May 9, 2021).

[395] *See* Federal Communications Commission, Broadband Speed Guide, available at *https://www.fcc.gov/consumers/guides/broadband-speed-guide* (last visited October 28, 2021).

such, projects meeting a lower threshold could not be considered ''necessary'' investments in broadband infrastructure, so Treasury has retained the threshold from the interim final rule.

Further, the final rule adds a requirement that recipients address the affordability needs of low-income consumers in accessing broadband networks funded by SLFRF, either by requiring service providers that provide service to households to either participate in the FCC's Affordable Connectivity Program (ACP), or a broad-based affordability program with commensurate benefits. Treasury believes that this requirement will increase the number of customers that are able to take advantage of broadband infrastructure funded by SLFRF, increasing the effectiveness of funds in connecting households and businesses to high-speed internet that is critical to work, health, and education. There is a potential that this requirement may marginally increase project costs for recipients and providers, but this impact is uncertain, given the varying business models and pricing structures of broadband projects and providers.

Labor Standards

In this Supplementary Information for the final rule, Treasury encourages recipients to ensure that capital expenditures to respond to the public health and negative economic impacts of the pandemic and water, sewer, and broadband projects use strong labor standards, including, for example, project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions. Treasury believes that its encouragement of labor standards carries benefits because it will ensure that workers have access to strong employment opportunities associated with infrastructure projects, which will in turn aid the economic recovery. Treasury believes that infrastructure projects may also benefit from stronger labor standards due to the potential of these standards to ensure a stronger skilled labor supply and minimize labor disputes and workplace injuries, which can result in costly disruptions to projects. Treasury assesses that these benefits will increase the economy and efficiency of infrastructure projects undertaken through SLFRF and will outweigh the potential for a marginal increase in labor costs.

Splitting Payments to Recipients

Treasury is required by statute to deliver funds to local governments in two payments separated by at least twelve months, and the interim final rule provided for split payments to a majority of states as well. As discussed above, splitting payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of states with significant remaining elevation in the unemployment rate could face heightened additional near term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of state governments, Treasury has provided funds in one payment. Treasury believes that this approach strikes an appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific states. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.

Reaching Underserved Communities

Finally, the final rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically underserved and have experienced disproportionate impacts of the COVID–19 crisis. Targeting relief is in line with Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,'' which laid out an Administration-wide priority to support ''equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' To this end, the final rule enumerates a list of services that may be provided using SLFRF funds in disproportionately impacted communities, including low-income areas, to address the more severe impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use SLFRF funds to restore state and local workforces, where women and people of color are disproportionately represented; and requires that broadband infrastructure projects participate in programs to support affordability of broadband service. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs

This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer SLFRF funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires states to allocate SLFRF funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through states. Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that many recipients receive direct or indirect funding from federal government programs and that many have familiarity with how to administer and report on federal funds or grant funding provided by other entities. In particular, states, territories, and large localities will have received funds from the Coronavirus Relief Fund (CRF) and Treasury expects them to rely heavily on established processes developed through that program or other prior grant funding, mitigating burden on these governments. Treasury has enhanced the level of recipient reporting as compared to the CRF, incorporating feedback from the Government Accountability Office and others that additions would improve the oversight of recipients' use of funds. To balance the oversight benefits with the costs of added reporting burdens, Treasury has incorporated other mechanisms to mitigate burden. For example, Treasury is ''tiering'' reporting requirements so that recipients that receive relatively lesser amounts of SLFRF funds are required to submit less frequent reports than recipients receiving greater amounts of funds. Treasury is noting administrative costs as a generally allowable use of SLFRF funds, which defrays administrative expenses to recipients that may be needed to comply with reporting requirements. Treasury has also provided options for recipients to use eligibility thresholds they are already familiar with during administration of SLFRF funds, which will enable recipients to avoid the costs of setting up new programs and reporting mechanisms to meet reporting and compliance requirements. For example, Treasury has permitted recipients to use ''categorical eligibility'' when delivering assistance to particular groups, such as impacted or disproportionately impacted households.

In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—states, cities, counties, and Tribal governments—along with various communities across the United States, including those that are underserved. Furthermore, Treasury has made clear in guidance that SLFRF funds may be used to cover certain expenses related to administering programs established using SLFRF funds.[396]

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on state, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The compliance costs are imposed on state, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected state, local, and Tribal government officials and associations in the process of developing the interim final rule and this final rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency . . . grants.'' The APA also provides an exception to ordinary notice-and-comment procedures ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The interim final rule was issued without prior notice and comment procedures because it implemented statutory conditions on the eligible uses of SLFRF funds, and addressed the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses to help address the economic and public health emergency. See the **SUPPLEMENTARY INFORMATION** section of the May 17, 2021 interim final rule for the applicability of the requirements of 5 U.S.C. 553. In addition, under the exception discussed in that section for matters relating to agency grants, the requirements of 5 U.S.C. 553 also do not apply to this final rule. After careful consideration of the comments received, this final rule adopts the May 17, 2021 interim final rule with the revisions discussed in this **SUPPLEMENTARY INFORMATION.**

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Paperwork Reduction Act

The information collections associated with the SLFRF program have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) and assigned control number 1505–0271. Under the PRA, an agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below.

Reporting	Number respondents	Number responses per respondent	Total responses	Hours per response	Total burden in hours	Cost to respondents ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	123,220
Tribal Employment Information Form	584	1	584	.75 (45 minutes)	438	21,374
Request for Extension Form	96	1	96	1	96	4,685
Annual Recovery Plan Performance Report	430	1	430	100	43,000	2,098,400
NEU Distribution Template	55	2	110	10	1,100	53,680
Non-UGLG Distribution Template	55	2	110	5	550	26,840
Transfer Forms	1,500	1	1,500	1	1,500	73,200
Project and Expenditure Report	37,000	1	37,000	5	185,000	9,028,000
Total	54,870		54,980		236,735	11,552,619

*Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the internet at *https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm* (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.

Regulatory Flexibility Analysis

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 Administrative Procedure Act 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.

Rules that are exempt from notice and comment under the APA or any other law are also exempt from the RFA

[396] *See* Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, 10.2, as of July 19, 2021; *https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf.*

requirements, including the requirement to conduct 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. Because this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

Rule Text

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

For the reasons stated in the preamble, the United States Department of the Treasury amends 31 CFR part 35 as follows:

PART 35—PANDEMIC RELIEF PROGRAMS

■ 1. Revise Subpart A to read as follows:

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

Sec.
35.1 Purpose.
35.2 Applicability.
35.3 Definitions.
35.4 Reservation of authority, reporting.
35.5 Use of funds.
35.6 Eligible uses.
35.7 Pensions.
35.8 Tax.
35.9. Compliance with applicable laws.
35.10. Recoupment.
35.11 Payments to States.
35.12. Distributions to nonentitlement units of local government and units of general local government.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f).

§ 35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a ''city,'' as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraphs (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.* (i) A program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: Presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract;

households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations; households that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies (42 U.S.C. 1395w–114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: Responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(2) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(3) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(4) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(5) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(6) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(7) Benefits for the surviving family members of individuals who have died from COVID–19, including cash assistance to surviving spouses or dependents of individuals who died of COVID–19;

(8) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(9) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)–(8);

(10) The following expenses related to Unemployment Trust Funds:

(i) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such account as of May 17, 2021 plus the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(ii) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(11) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(i) Services to address health disparities of the disproportionately impacted household, population, or community;

(ii) Housing vouchers and relocation assistance;

(iii) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(iv) Capital expenditures and other services to address vacant or abandoned properties;

(v) Services to address educational disparities; and

(vi) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(1) Programs, services, or capital expenditures that respond to the negative economic impacts of the COVID–19 public health emergency, including loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, or providing technical assistance; and

(2) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support micro-businesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(1) Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency;

(2) Payroll, covered benefit, and other costs associated with programs or services to support the public sector workforce and with the recipient:

(i) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or

(ii) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021, provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(3) Costs to improve the design and execution of programs responding to the COVID–19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(4) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 to paragraph (b)(4) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)(4)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID–19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general revenue due to the public health emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) of this section equals:

*Max {[Base Year Revenue * (1 + Growth Adjustment)^(n_t/12)] – Actual General Revenue;* 0}

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(1) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(2) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue;

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments*—(i) *Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j–19a(b)(2), 300j–19b(b)(1), 300j–24(d)(2), and 300j–25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of subparagraph

(b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.* Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(1) The prohibition on the rehabilitation of dams and reservoirs in 40 CFR 35.3520(e)(1) and (3); and

(2) The requirement in 40 CFR 35.3520(b)(1) that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under 40 CFR 35.3520(a).

(2) *Broadband investments*—(i) *General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(*1*) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(*2*) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(*1*) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(*2*) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

§ 35.7 Pensions.

A recipient (other than a Tribal government) may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in

violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii) of this section.

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, 35.6, or 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.5, 35.6 or 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* The Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to the Secretary a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until at least May 10, 2022 and not more than twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and

(2) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of

January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Jacob Leibenluft,

Chief Recovery Officer.

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Last List January 24, 2022

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